

# MINUTES

## JOINT SAND CITY COUNCIL AND REDEVELOPMENT AGENCY

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Regular Meeting – November 17, 2009  
7:00 P.M.  
CITY COUNCIL CHAMBERS

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Mayor Pendergrass opened the meeting at 7:00 p.m.

The invocation was led by Reverend Robert Hellam.

The Pledge of Allegiance was led by Police Chief Klein.

Present: Council Member Blackwelder  
Council Member Carbone  
Council Member Hubler  
Council Member Kruper  
Mayor Pendergrass

Staff: Steve Matarazzo, City Administrator/Community Development Director  
Jim Heisinger, City Attorney  
Richard Simonitch, City Engineer  
Michael Klein, Police Chief  
Linda Scholink, Director of Administrative Services/City Clerk  
Charles Pooler, Associate Planner

### AGENDA ITEM 4, COMMUNICATIONS

A. Written communication distributed this evening included a letter of support for agenda item 8C, and a letter from the property owner regarding agenda item 10A.

B. Oral

7:03 p.m. Floor Opened for Public Comment  
No Comments

7:03 p.m. Floor Closed to Public Comment

### AGENDA ITEM 5, CONSENT CALENDAR

The Consent Agenda consists of routine items for which City Council approval can be taken with a single motion and vote. A Council member may request that any item be placed on the Regular Agenda for separate consideration.

A. There was no discussion on the annual review of the Conditional Use Permits (CUP) and Coastal Development Permits (CDP) listed below.

(1) CUP #328/CDP 88-01, Granite Rock (construction), 1755 Del Monte Blvd

(2) CUP #440, Don Varner Design (design studio), 440-A Ortiz Avenue

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- (3) CUP #478, Signature Nails & Skin (sales/service), 824 Playa Avenue
- (4) CDP #07-05, Wachovia Bank (banking), 2140 California Avenue
- B There was no discussion of the November 3, 2009 Sand City Council Meeting Minutes.
- C. There was no discussion of the Police Department Monthly Report for October 2009.
- D. There was no discussion of the Public Works Department Monthly Report for October 2009.
- E. There was no discussion of the City **RESOLUTION** Recognizing Disaster Kleanup Specialist as KSBW's 2009 Small Business Award Recipient.
- F. There was no discussion of the City **RESOLUTION** Recognizing Monterey Mattress as KSBW's 2009 Small Business Award Recipient.
- G. There was no discussion of the City **RESOLUTION** for Prop 1B Street Improvement Project Change Order.
- H. There was no discussion of the donation to the Alzheimer's Association for \$250.

Motion to approve the Consent Calendar was made by Council Member Blackwelder, seconded by Council Member Carbone. AYES: Council Members Blackwelder, Carbone, Hubler, Kruper, and Pendergrass. NOES: None. ABSENT: None. ABSTAIN: None. Motion Carried.

#### **AGENDA ITEM 6, CONSIDERATION OF ITEMS PULLED FROM CONSENT CALENDAR**

There was no need for agenda item 6.

#### **AGENDA ITEM 7, PRESENTATIONS**

- A. The City Administrator reported to the City Council that the audit had been completed by Hayashi & Wayland, for both the City and the Redevelopment Agency. The audit is considered to be an "unqualified audit" meaning it is a clean opinion in all material respects, in conforming to generally accepted accounting practices.

The Personnel/Budget committee reviewed the draft audit on October 29, 2009. The committee is recommending the Council and Agency Board accept the audit report.

**Sunny Wong, CPA for Hayashi & Wayland:** reported that the financial statements were reviewed in detail with the budget committee several weeks ago. The financial statements are presented in two different formats. The government-wide financial statements are designed to provide readers with a broad overview of the City finances, in a manner similar to the private-sector. In the government wide

statements, all of the current year's revenues and expenses are taken into account regardless of when cash is received or expenses paid. These statements show an increase in net assets of \$2,488,072 for the fiscal year ending June 30, 2009.

She reviewed the independent auditor's report to the Council, which states that the financial statements are the responsibility of the City's management, and the auditor's responsibility is to express an opinion on those financial statements based on their audit. In their opinion, the financial statements are presented fairly for fiscal year 08/09, in conformity with accounting principles generally accepted in the United States of America. The audit is conducted for the purpose of forming an opinion on the financial statements that collectively comprise the City of Sand City's basic financial statements. The information has been subjected to auditing procedures. They encountered no disagreements with management over the application of significant accounting principles, the basis for management's judgments on any significant matters, the scope of the audit or significant disclosures to be included in the financial statements.

**Therese Courtney, Hayashi & Wayland** The governmental fund statements show a net loss of \$4.3 million due to the expenditure of over \$7 million capital outlay for the desalination plant. She stated that the accounting staff was very cooperative to work with.

The City Administrator reported that the City's net assets increased 24% to \$12.6 million in fiscal year 2008-2009 from \$10.1 million in fiscal year 2007-2008. He also reviewed the economic factors and the list of on-going expenditures that have been reduced in fiscal year 2009-2010: Monterey-Salinas Transit Contract savings of approximately \$30,000; Hope Services Contract reduction by 50%; savings on the Monterey Fire contract of approximately \$35,000; employee accepted salary freeze savings of approximately \$240,000; and the deferred hiring of a planning manager of approximately \$150,000.

- 1) Motion to approve City **RESOLUTION** accepting the Audited Financial Statements for the Year Ended June 30, 2009 and Independent Auditors' Report was made by Council Member Carbone, seconded by Council Member Kruper. AYES: Council Members Blackwelder, Carbone, Hubler, Kruper, and Pendergrass. NOES: None. ABSENT: None. ABSTAIN: None. Motion Carried.
  - 2) Motion to approve Redevelopment Agency **RESOLUTION** accepting the Audited Financial Statements for the Year Ended June 30, 2009 and Independent Auditors' Report was made by Agency Board Member Blackwelder, seconded by Agency Board Member Hubler. AYES: Agency Board Members Blackwelder, Carbone, Hubler, Kruper, and Pendergrass. NOES: None. ABSENT: None. ABSTAIN: None. Motion Carried.
- B. Mayor Pendergrass requested Theresa Ream to approach the podium. He presented her with a Resolution recognizing "Disaster Kleenup Specialists" as KSBW's 2009 Small Business Award Recipient. He thanked her for her professionalism and having their business in Sand City. Theresa Ream said she humbly accepted this award on behalf of all the people that work so hard in the company and a special thanks to her husband.

Mayor Pendergrass then requested Dale Gingerich come up to the podium. The Mayor presented Mr. Gingerich with a Resolution recognizing the Monterey Mattress Company as KSBW's 2009 Small Business Award Recipient. The Mayor thanked him for his long standing business in Sand City. Mr. Gingerich thanked his staff, crew and all of his customers.

- C. Carl Sedoryk, General Manager, Monterey-Salinas Transit, presented information on the newly established Monterey-Salinas Transit District (MSTD). The new law allows the Transit District to raise revenue through sales tax initiatives. It will require the new members of Sand City, Gonzales, Soledad, Greenfield and King City be added to its board of directors. The new District will become effective on July 1, 2010. He invited the City to appoint someone to attend their strategic planning workshop, on January 11, 2010, beginning at 9:00 am.

**This next item was taken out of sequence**

## **AGENDA ITEM 10, NEW BUSINESS**

- A. The Mayor stated that we are here tonight for this Council to decide if we want Medical Marijuana Dispensaries in Sand City. Is this what is best for our citizens and our community?

The City Administrator reviewed with the Council that at the last meeting a member of the public addressed the Council stating his desire to open a medical marijuana dispensary in Sand City. Since that time, the Mayor directed staff to prepare an ordinance prohibiting this type of land use within Sand City. An urgency ordinance, creating a prohibition of dispensaries within town, has been prepared to address this issue. It requires a 4/5ths vote of the Council to go into immediate effect for 45 days. Thereafter, a public hearing is required, and then with another 4/5ths vote it can be extended for a period totaling two years.

Currently the cities of Marina, Salinas and Seaside prohibit medical marijuana dispensaries within their jurisdictions. The City Attorney has done research on this issue and finds that case law is continually evolving in regard to what a jurisdiction can and cannot do to regulate these dispensaries. What is before you tonight is a proposal to adopt a temporary moratorium on the establishment and operation of a medical marijuana dispensary. This is a zoning tool designed to allow the City time to study this particular land use. We did receive a letter today from a property owner expressing his concern about the negative impact this type of business would have on his plans to development a mixed-use project on his large property.

The Chief of Police spoke to the Council noting his lack of personal experience with medical marijuana dispensaries, but he has used the last several days to collect information. In researching, he found cities that have had trouble, and one city where there has been no trouble reported. Secondary impacts included increased crime from burglaries, illegal resale of the drug, theft, etc. He said that in West Hollywood, through strict rules and regulations, they have been able to prevent problems. He said he wasn't sure what problems a dispensary in Sand City could

cause because it would depend on the conditions of the operation. The current police department is not staffed to manage secondary impacts from a medical marijuana dispensary.

7:30 P.M. Floor Opened for Public Comment

There were 6 people that spoke in favor of establishing a Medical Marijuana dispensary in Sand City. None of the people who spoke were residents, property owners or business owners in Sand City. Some of those who spoke in favor of the dispensary are medical marijuana users. They said this would be the first dispensary in Monterey County, and make it easy and safe for medicinal marijuana users to get their cannabis locally. This is not for the illegal use of the drug. They don't feel it is fair that they have to go to Santa Cruz, Oakland or San Francisco to get their medicine. One gentlemen told the Council to consider this an economic opportunity for the City. They suggested the City do additional research and find the Cities that make it work, and are successful, as with the City of West Hollywood. Patients should have the right to access their medication.

There were 7 people who spoke against the dispensary, 6 of whom were residents of Sand City. They agreed that Sand City is a small, mixed use community. There are children all around, people live and work in close proximity. Sand City is not big enough to absorb the security of this type of operation. Most people spoke about their concern and compassion for the people that are legally using medical marijuana, and suggested that a better place to get their drugs would be from the doctor or pharmacy. Ryan Ranch was suggested as a more suitable location for a marijuana drug dispensary.

7:55: P.M. Floor Closed to Public Comment

The Mayor again stated that we need to be careful about what comes into the City. We have security issues, and we are in the midst of budget reductions. We don't want problems within our City affecting our citizens, including our children. This use would not be toward the betterment of our City.

Council Member Blackwelder feels the citizens should come first. Ryan Ranch would be a good location where the doctors and medical facilities are located already.

Council Member Carbone stated that she does not agree with a Medical Marijuana dispensary, and they should get their medications in a drug store, not in a small town. She also said there are issues that needed to be studied and reported back to the Council.

Council Member Kruper asked, what would be included in this additional study? Are we going to send a letter out to the citizens and the businesses to see how they feel?

The City Administrator responded that there is a 120 page report that he will check on Cities that have these dispensaries, and he will draft a letter to see how residents and property owners feel about this issue.

Council Member Hubler thanked the audience for coming and for their participation.

He has been on the City Council for 20 years. This is something that the State and Federal Government are at odds with. This is a small community with 300 plus residents, and 100 voters; and I don't think this small City is the right place for this. My first duty is to the citizens, then the businesses, and then the region.

The Mayor said this proposed location is in the City's West End District and is an area we are looking to develop and build up. It is a Redevelopment area, and we have big plans in this area for the future.

The City Attorney stated the law in this area is unsettled. There is a patchwork of legislation across the State. He urged the Council to adopt the Ordinance before them tonight.

Motion to approve Interim Urgency **ORDINANCE** establishing a moratorium on the establishment and operation of medical marijuana dispensaries pursuant to Government Code Section 65858 was made by Mayor Pendergrass, seconded by Council Member Blackwelder. Roll Call Vote was taken. AYES: Council Members Blackwelder, Carbone, Hubler, Kruper, and Pendergrass. NOES: one. ABSENT: None. ABSTAIN: None. Motion Carried.

8:10 p.m. – 8:20 p.m. The Council took a ten minute break

**At this time the meeting reverted back to the scheduled items on the Agenda.**

## **AGENDA ITEM 8, PUBLIC HEARINGS**

*{Council Member Blackwelder stepped down from the dais, due to a possible conflict of interest by residing within 500" of the proposed project}*

- A. Associate Planner Pooler presented an application for a coastal development permit, submitted by William Sterling, of Pebble Beach Imports LLC, to establish an olive oil and vinegar product bottling and distributions business at 1801 Catalina Street. The subject building is a 7,260 square foot 2-story commercial building; originally built as a self storage facility, but later converted to office and storage. The applicant will be utilizing the 3,300 square foot lower level, while the upper level will remain vacant until leased to another tenant. The lower level of the building will be used for bottling, storing, and distributing olive oil and vinegar products. The operation receives raw materials in barrels, which are then pumped into smaller containers, corked, labeled, wrapped, and readied for shipment. The site provides twelve on-site parking spaces. The applicant requires five spaces for his operation. The remaining six spaces would be for future use of the upper level. Staff recommends the permit prohibit loading/unloading activities that may obstruct thru traffic between Catalina Street and Ortiz Avenue. Staff does not anticipate detrimental effects from the proposed use that would adverse impacts on surrounding properties. This type of use is very low-key, and appears to be compatible with the mixed-use zoning and surrounding neighborhood. There will be three employees, including the manager at this location. Staff recommends approval of a coastal development permit for Pebble Beach Imports.

8:27 P.M. Floor Opened to Public Comment

**William Sterling, Applicant:** answered Council Member Kruper's question regarding the availability of restrooms. The applicant answered that they would have access to the upper section where the restrooms are located until such time as the upper floor was rented, and at that time the property owner would construct restrooms on the lower level. Mr. Sterling stated that he was in agreement with all the conditions.

8:29 P.M. Floor Closed to Public Comment

Motion to approve City **RESOLUTION** Approving Coastal Development Permit 09-06 Authorizing an Olive Oil and Vinegar Bottling and Distribution Center at 1801 Catalina Avenue was made by Council Member Member Kruper, seconded by Council Member Carbone. AYES: Council Members, Carbone, Hubler, Kruper, and Pendergrass. NOES: None. ABSENT: None. ABSTAIN: Council Member Blackwelder. None. Motion Carried.

*{Council Member Blackwelder returned to the dais}*

- B. Associate Planner Pooler presented an application submitted by Thomas H. George Jr., of the Coastal Fabrication Company, for authorization to establish an ornamental iron fabrication workshop into an existing 4,868 square foot commercial building at 755 Redwood Avenue in Sand City. The site was once occupied by Bay Door & Supply for manufacturing, wholesale, storage, and shipments. There are eight off-street parking spaces. The zoning code requires a minimum of seven (7) on-site parking spaces, based upon the building's floor area. There is adequate parking. The permit should prohibit storage within the parking area to maintain vehicle parking and access.

Considering that there are a number of residential dwellings within 200 feet of the subject property. Staff recommends manufacturing activities only occur between the hours of 8:00 a.m. and 6:00 p.m. Monday through Friday, and 10:00 a.m. to 5:00 p.m. on Saturday, with no Sunday manufacturing allowed. Deliveries to and from the site should only occur between these hours as well. The site will be used to manufacture ornamental ironwork for residential construction hand railings, stair cases, gates, doors, and sculptures. There will be four full-time employees. There is adequate on-site water credit for the proposed use. Staff recommends approval of the coastal development permit, with the recommended conditions.

8:35 P.M. Floor Opened for Public Comment

**Thomas George Jr., Applicant:** Agreed with the conditions of the permit.

**Sal Balboa, Property Owner:** Explained to the Council that he had been the owner of Bay Doors which had been at been located, at this same location for 25 years, and they had never received a noise complaint. He has also added eight additional parking spaces.

8:38 P.M. Floor Closed to Public Comment

Motion to approve City **RESOLUTION** Approving Coastal Development Permit 09-05 Authorizing an Ornamental Iron Workshop at 755 Redwood Avenue was made by Council Member Carbone, seconded by Council Member Hubler. AYES: Council Members Blackwelder, Carbone, Hubler, Kruper, and Pendergrass. NOES: None. ABSENT: None. ABSTAIN: None. Motion Carried.

- C. Associate Planner Pooler presented an application for a conditional use permit, submitted by Ryan Charles and Jacob Tsykpin, co-owners of Crossfit Monterey. They are proposing to relocate their fitness gym to a commercial building at 337 Olympia Avenue, Unit B in Sand City. Crossfit Monterey has provided individual training and group classes at 495-C Elder Avenue for the past year without incident. Programs will consist of weightlifting, calisthenics, and cardio respiratory conditioning; and is designed to be flexible for people of all ages and fitness levels. The bulk of the training will be done inside the building, with some exercise outside. The only employees are the gym's owners. The applicant intends to hold 1-hour long classes at 6:00 a.m., 12:00 noon, 5:00 p.m. and 6:00 p.m. Monday through Friday.

The building frontage is 50-feet wide providing five (5) on-site parking spaces. The applicant's unit frontage is 25-feet wide with two parking spaces in front and one parking space split between this and the adjacent unit. The proposed classes, with an average of 5 to 10 students exceed the property's ability to provide ample on-site parking. There are curbside parking spaces available within the 300 block of Olympia Avenue; however, these few spaces are shared amongst a number of businesses. This block is probably one of the most vehicle congested areas in and around Sand City. This new location's inability to provide adequate on-site parking, as compared to the Elder Avenue site, is of concern. Unless the applicant was willing to decrease the scale of the business to a 1 on 1 training orientation only, with no more than one client on the premises at any time, with group classes limited to only 5:00 p.m. and 6:00 p.m. daily, staff finds it difficult to support the application at the 337-B Olympia Avenue location.

8:50 P.M. Floor Opened for Public Comment

**Ryan Charles, and Jacob Tsykpin, Applicants:** both applicants came to the podium. They stated that the noon class had been cancelled. They currently have classes at 6 am and 7 am in the morning, and 5 pm and 6 pm in the evening. They think with 14 parking spaces they will have ample parking. The landlord has brought letters from surrounding businesses, approving the clientele of Crossfit Monterey to use their parking in the morning and evenings. They stated 70% of their clientele are military personnel.

**Gerry Lipori, Property Owner:** He reported to the Council that he had polled his other tenants in the area and he is submitting three letters from those tenants dedicating 125 feet of parking on the off hours, which would represent 100 feet on Orange and 25 feet on Olympia. This would give the applicants twelve additional parking spaces. He stated this group of people is community oriented; they bring a lot of positive energy.

**Pete Erickson, Commercial Real Estate Broker:** This use would be fabulous for Sand City, if the parking can be addressed; it would be a great benefit to the City.

8:57 P.M. Floor Closed to Public Comment

Motion to continue the application for a Conditional Use Permit to Crossfit Monterey for a Fitness Gym with Group Classes at 377-B Olympia Avenue in Sand City to the December 1<sup>st</sup> Council meeting was made by Mayor Pendergrass, seconded by Council Member Carbone. AYES: Council Members Blackwelder, Carbone, Hubler, Kruper, and Pendergrass. NOES: None. ABSENT: None. ABSTAIN: None. Motion Carried.

Staff was directed to work on the parking issues with the applicants.

## **AGENDA ITEM 9, OLD BUSINESS**

- A. The City Engineer reported the desalination plant is currently shut down due to the drilling of the new well in Tioga Avenue. CDM is working out some minor issues with the Department of Public Health. The replacement well is going well. The test pumping will begin later this week.

The City Engineer introduced Leon Gomez from his office who has been in charge of the daily operations of the street work and the coastal access work. Prop 1B as originally bid, is complete. Change order work commences tomorrow, and should be completed by the end of the week.

- B. The Secretary of the Joint Powers Financing Authority requested the Council to confirm its officers as required by the Bylaws at the annual meeting at the time of the second regular meeting of the City Council of Sand City during the month of November each year.

Motion to approve **RESOLUTION** of the Joint Powers Financing Authority confirming its officer's was made by JPFA Member Kruper, seconded by JPFA Member Blackwelder. AYES: JPFA Members Blackwelder, Carbone, Hubler, Kruper, and Pendergrass. NOES: None. ABSENT: None. ABSTAIN: None. Motion Carried

- C. The Director of Administrative Services requested RSVP's from the City Council for upcoming events.

## **AGENDA ITEM 11, CLOSED SESSION**

- A. City Council /Agency Board to adjourn to Closed Session to confer with Legal Counsel regarding pending litigation in accordance with Section 54956.9(c) of the Ralph M. Brown Act,

**The City Attorney determined there was no need for closed session**

- 1) *CalAm v. Seaside*
- 2) *State Water Resources Control Board Order WR 2009-0060*
- 3) *Monterey Peninsula Water Management v. State Water Resources Control Board (No. M102101)*
- 4) *CalAm v. State Water Resources Control Board*

## **AGENDA ITEM 12, ADJOURNMENT**

Motion to adjourn the City Council meeting was made by Council Member

Blackwelder, seconded by Council Member Kruper, to the next regularly scheduled Council meeting on December 1, 2009 at 7:00 p.m. There was unanimous consensus of the Council to adjourn the meeting at 9:22 p.m.

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Linda K. Scholink, City Clerk