

MINUTES
JOINT SAND CITY COUNCIL AND SUCCESSOR AGENCY
OF THE REDEVELOPMENT AGENCY

Regular Meeting – December 1, 2015
5:30 P.M.
CITY COUNCIL CHAMBERS

Mayor Pendergrass opened the meeting at 5:30 p.m.

The invocation was led by Reverend Carl Kelleher.

The Pledge of Allegiance was led by Police Chief Brian Ferrante.

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

Staff: Todd Bodem, City Administrator
Jim Heisinger, City Attorney
Leon Gomez, City Engineer
Brian Ferrante, Chief of Police
Connie Horca, Deputy City Clerk

AGENDA ITEM 4, COMMUNICATIONS

A. Written communication distributed to the Council was a staff report for Agenda item 8D.

B. Oral

5:31 P.M. Floor opened for Public Comment.

There was no comment from the Public.

5:31 P.M. Floor closed to Public Comment.

AGENDA ITEM 5, CONSENT CALENDAR

Mayor Pendergrass commented that Agenda item 5D be pulled from the Consent Calendar for separate consideration under Agenda item 6.

- A. Conditional Use Permits (CUP) and Coastal Development Permits (CDP) are subject to annual review by the City Council and City staff. Upon review of each of the following Use Permits, staff is recommending continued operation of the Use Permits to the City Council based on the finding that these uses are in compliance with their permits. There was no discussion of the following use permits.
- (1) CUP #186,236,286, Gene's Auto Body (automotive shop), 1531-A Shasta/ 524-A Elder Avenue
 - (2) CUP #394, Frank D'Aquanno (automotive), 477 Redwood Avenue
 - (3) CUP #425, Glastonbury, Inc. (equipment store & rent), 495-A Elder Avenue
 - (4) CUP #480, Video Ranch (office, video production), 1793 Catalina Avenue
 - (5) CDP #07-07, Ga-Ga (hair salon), 490 Orange Avenue
 - (6) CUP #422, Garza Plumbing (contractor), 351-A Orange Avenue
 - (7) CUP #574, Ringer Electric (Photo Studio), 613-C Ortiz Avenue
 - (8) CUP #575, Mattress Nation (wholesale/storage), 495-B Elder Avenue
 - (9) CDP #01-05, Guistiniani (Masonry contractor), 698 Ortiz Avenue
- B. There was no discussion of the Sand City Council Meeting Minutes, November 17, 2015.
- C. There was no discussion of the Fort Ord Reuse Authority Monthly Report, November, 2015.
- D. The City **Resolution** continuing the appointments to various Local and Regional Agencies and Boards, effective January 1, 2016 was pulled from the consent calendar for separate discussion under Agenda item 6.
- E. There was no discussion of the City/Successor Agency Monthly Financial Report, October 2015.

Motion to approve the Consent Calendar items 5A-C and E was made by Council Member Kruper, seconded by Council Member Carbone. AYES: Council Members Blackwelder, Carbone, Hubler, Kruper, Pendergrass. NOES: None. ABSENT: None. ABSTAIN: None. Motion carried.

AGENDA ITEM 6, CONSIDERATION OF ITEMS PULLED FROM CONSENT CALENDAR

Agenda Item 5D – Mayor Pendergrass commented on changes to the Appointments List and confirmed Vice Mayor Carbone's appointment to the West End Oversight Committee. Council Member Kruper confirmed that the Monument Committee has not had a meeting, and that it may be removed from the appointments list.

Motion to approve Consent Calendar item 5D City **Resolution** continuing the appointments to various Local and Regional Agencies and Boards, effective January 1, 2016 was made by Council Member Kruper, seconded by Council

Member Blackwelder. AYES: Council Members Blackwelder, Carbone, Hubler, Kruper, Pendergrass. NOES: None. ABSENT: None. ABSTAIN: None. Motion carried.

AGENDA ITEM 7, OLD BUSINESS

A. Progress report on Public Works projects, South of Tioga Redevelopment project, Coastal projects, and other Sand City community programs by City Engineer/Community Development Director/City Administrator.

City Engineer Leon Gomez reported that the desalination plant produced less than one acre feet for the month of November due to high salinity at the feed water wells, making it difficult for Cal-Am to make the permitted levels for brine discharge. Cal-Am does not know what is happening with the groundwater, and Hydrometrics is currently investigating the issue. Staff is presently reviewing the Stormwater Program year 3 requirements, and establishing a timeframe for completion within the next year. The emergency street repair work on Playa Avenue was performed yesterday. Traffic control was set up and adjusted throughout the day to ensure safe access to the shopping centers. Monterey Peninsula Engineering (MPE) excavated a 10x20 foot area of pavement adjacent to the sink hole. They installed a stabilization fabric and reconstructed the section with 2" feet of base rock material and asphalt. The work was completed and the construction cost was less than the engineers estimate.

The City Engineer explained to the Council the possible reasons why the sink hole may have occurred, and the work that was performed should prevent future pavement failure.

The encroachment permit for repair of the gas line at 1676 Contra Costa was completed. Agenda item 8D will address the proposed street improvement project at Hickory Avenue and Dias Street.

AGENDA ITEM 8, NEW BUSINESS

A. Consideration of City RESOLUTION Approving an Expenditure not to Exceed \$3,000 for Services by HF&H Consultants for Franchise Agreement Management and Oversight Services within the 2015-16 Fiscal Year

Mayor Pendergrass commented that the City's franchise agreement for waste services has not been updated for several years, and that the amount requested should be sufficient to meet consulting needs for the City.

Motion to approve the City **Resolution** approving an expenditure not to exceed \$3,000 for Services by HF&H Consultants for Franchise

Agreement Management and Oversight Services within the 2015-16 Fiscal Year was made by Council Member Kruper, seconded by Council Member Hubler. AYES: Council Members Blackwelder, Carbone, Hubler, Kruper, Pendergrass. NOES: None. ABSENT: None. ABSTAIN: None. Motion carried.

B. Discussion of Medical Marijuana Regulation & Safety Act

Mayor Pendergrass commented that the State of California has not changed the rules, but has instilled regulations to enforce these rules. City Administrator Todd Bodem commented that Governor Jerry Brown signed a comprehensive package to establish a regulatory structure around the medical marijuana industry. AB 266, AB 243, and SB 643 comprise the Medical Marijuana Regulations & Safety Act. The Act includes local prohibition or regulation where Cities may prohibit or regulate medical marijuana businesses within their jurisdiction. All medical marijuana businesses must have a state license, permission from the State, and City (“dual licensing”) for businesses to operate. It further includes enforcement guidelines that involves a City’s enforcement of State laws. The State may impose civil and criminal penalties for operating a medical marijuana business without a State license.

The City Council adopted an Ordinance on October 7, 2010 amending Title 18 of the Sand City Municipal Code and the Local Coastal Implementation Plan to prohibit medical marijuana dispensaries and the general sale of marijuana in all zoning districts. Sand City does not have a land use ordinance in place regulating cultivation of marijuana. The State Department of Food and Agriculture will be the sole licensing authority for medical marijuana cultivation beginning March 1, 2016. Should the City decide to adopt an ordinance prohibiting the cultivation of marijuana, it must be effective by February 28, 2016. If the City desires to prohibit the delivery of medical marijuana within its jurisdiction, then an ordinance must be adopted expressly prohibiting delivery services or mobile dispensaries.

City Attorney Jim Heisinger commented that Staff is seeking Council direction regarding the sale, cultivation and delivery of medical marijuana. The ordinance prohibiting the sale of marijuana adopted in 2010 would need to be updated. An ordinance for the cultivation and delivery would need to be adopted should the Council decide to not allow these activities within Sand City. The ordinance would need to take effect prior to March 1, 2016.

Council Member Kruper commented that due to the complexity and nature of the issue that it be forwarded to the Public Safety Committee. Mayor Pendergrass advised that due to the time constraints and urgency of having an ordinance in place, the item should be considered by the Council.

Chief Ferrante suggested that the public be invited to comment on the item prior to sharing his experience in dealing with the medical marijuana issue.

5:49 P.M. Floor opened for Public Comment.

Calvin Fahey, a volunteer representing Cannabis Healing Solutions commented that he is a retired US Army Military Officer with the Special Forces, works with veterans in the area, the Coastal Growers Association, and non-profit organizations. He would like to see safe access primarily for veterans. He has served a volunteer delivery driver of these medicines to citizens in the area who are adults with medical problems. Mr. Fahey serves as a consultant and educator speaking on all aspects of medical cannabis to police officers, policy makers, and other organizations. He expressed the importance of medical cannabis and his availability to provide educational awareness to the community.

Jose Espinoza, Deputy Director of Monterey County NORML expressed his appreciation to the Council for allowing the public to speak to this issue. The voters did vote in favor of Prop 215, as well as Prop 19, that shows a majority of individuals were in favor of medical marijuana. He commented on being in favor of allowing discreet delivery of this specific medicine to people's homes. A delivery should not cause harm to the City or problems for the police department.

Reverend Carl Kelleher commented on the positive arguments vocalized by the public. He expressly disagreed that no harm would come to citizens and individuals of the community. Medical marijuana can be discreetly delivered to someone, but there is no guarantee that the individual would not get into a car, drive it, and cause a potential accident.

Jeff Lyons of Coastal Growers Association and L&G Attorneys, commented that there are options and medical benefits that have been shown in cannabis use. His grandfather who is in his early 100's is a user, in need of its medical benefits, and is unable to drive or grow it on his own. There are concerns with driving impaired; however, those same concerns also exist for prescription drugs as well as alcohol use.

Aaron Johnson on behalf of Coastal Growers Association expressed his support of delivery of cannabis for local patients, and for the manufacturing and cultivation within City limits. There are opportunities within the City for the indoor cultivation and manufacturing of cannabis. He advocated the use of industrial properties for growing and cultivation purposes. He encouraged the Council to consider allowing cultivation of cannabis within the City. There would be no community benefit should the Council ban it, and it would only encourage a black market.

5:57 P.M. Floor closed to Public Comment.

Police Chief Brian Ferrante commented that as the former Commander of the Narcotics Investigation Unit (NIU) with the City of San Jose, they dealt extensively with the medical marijuana issue. As expressed by the public audience there are those who are very passionate regarding the sale, cultivation, and use of cannabis for profit, and this may represent a problem. When dispensaries were established within the City of San Jose, a majority of them existed as a “for profit” business that had very little emphasis on patients. Through experience, people who use marijuana do it as a societal norm, and those who frequent dispensaries had no real medical issues. There are approximately 15% who are in need of cannabis for medical reasons and/or have debilitating health issues.

Chief Ferrante noted that a dispensary within the City is not a good neighbor. Unfortunately those who frequent the establishment are not considerate of the neighborhood, and would use the product on the street, and/or resell it to others, leaving a negative environment. There was no ability to determine who would be good or bad. Many of these individuals receive their prescriptions from a doctor who specializes in recommending medical marijuana and not from a reputable hospital or health care facility. When it comes to cultivation, an alarming rise in illegal cultivation occurred in homes and/or businesses. The cultivation within a home environment would destroy the house, due to the hydroponics set-up that uses an excessive amount of energy and liquids. This would also extend to cultivation in a commercial environment. If cultivation occurs with the proper filtration system, the odor would be minor; whereas, those who did not have it caused complaints from surrounding businesses. He further explained that with a delivery service theft and robberies would occur to the driver because he would have cash on him. There would be no way to regulate the deliveries into and out of the City.

Chief Ferrante summarized that there would be no benefit to Sand City to have a dispensary or cultivation site, and expressed his compassion for those who truly need it for personal medical reasons.

The Council discussed the pro’s and con’s of allowing a dispensary, delivery service, and cultivation within Sand City limits. Council Member Kruper read a letter to the Council from a former resident who was stricken with breast cancer explaining her dilemma to obtain medical marijuana during her battle with the disease. Each Council Member expressed their opinions in favor of, or against the issues of allowing deliveries, a dispensary, and cultivation within the City. Chief Ferrante elaborated that in order to regulate delivery within Sand City a location would need to be established to deliver only to Sand City and not out of City limits.

In response to Vice Mayor Carbone’s question regarding drafting the ordinance to allow delivery services, City Attorney Jim Heisinger responded that the Chief has drawn a distinction between deliveries into the City and deliveries out of the City. If the Council’s policy is to allow

deliveries into the City and not out of the City, an ordinance would be drafted accordingly. Mayor Pendergrass motioned to direct Staff to prepare an ordinance that no cultivation, and no deliveries be made in Sand City. Council Member Blackwelder seconded the motion. No formal Council vote was taken. There was consensus of the Council that an ordinance be prepared accordingly.

{Council Members Blackwelder and Kruper stepped down from the dais due to a possible conflict of interest by residing within 500' of the subject property}

C. Consideration and Approval of the Sand City Successor Agency RESOLUTION Approving the Long Range Property Management Plan (LRPMP) and Submitting said Plan for Final Review and Approval to the Sand City Oversight Board and Department of Finance

City Administrator Todd Bodem reported that in 2014, the Successor Agency prepared a Long Range Property Management Plan (LRPMP) that was approved by the Oversight Board and forwarded to the Department of Finance (DoF) in 2014. The DoF requested additional information that was missing from the LRPMP that staff has provided in the attached agenda. The revised LRPMP contains the missing information requested by DoF. Since the time of the original submittal, changes in the law would allow the City to keep properties designated for public parking, such as the Carroll Property. The proposal for the Carroll Property would be to sell 6 of the 14 lots to DBO Development, whose proceeds would be divided and distributed to each taxing entity. The remaining 8 lots would be utilized for public parking and purposes.

There was Council discussion revolving around SB 107, the ability for the Successor Agency to transfer certain properties, and which properties would be offered for sale. The Mayor received clarification from Legal Counsel and the City Administrator regarding the proposed transfer and sale of portions of the Carroll property, and the approximate amount of revenue the City would receive from the sale of the properties. The Mayor requested that the picture of "The Independent" be updated.

City Attorney Jim Heisinger clarified the proposed intention for the McDonald Site that is presently held under a Disposition and Development Agreement (DDA) with King Ventures. The proposal for the McDonald Site would allow the Successor Agency to hold title in order to fulfill an enforceable obligation. If King Ventures exercises its right to terminate the DDA, then the City would exercise its right to retain title pursuant to the COP. The City Attorney reported what would happen to the property should King request his money back. The Successor Agency would have to offer it for sale to parks and open space prior to offering it to a developer. If the Successor Agency transfers the property to the City, the City would also have restrictions on who may purchase the property. He suggested that a provision may be included within the LRPMP to state that

the Successor Agency would sell the property to pay off the King debt instead of transferring it to the City. The City Attorney further suggested that the following addition to page 210 of the Agenda packet include the addition to the sentence: *“or if the City does not exercise its right to take title, the Successor Agency will sell the property and the proceeds for sale will be distributed to the County Auditor-Controller.”* The same information would be included on page 211 in the corresponding paragraph.

Council Member Hubler commented that he is hopeful for the retention of the Carroll Property for City use. The City Attorney mentioned the real change in the law recognized that parking lots (or property used as a parking lot, such as the Carroll Property) can be transferred to the City at no cost under the new law, and that the revised LRPMP would be submitted to the Oversight Board for their review. There was Council discussion on the Community Garden and the Oversight Board's original intention for the properties use. Staff will forward the LRPMP to DOF tomorrow for their informal review prior to Oversight Board submission. The City Attorney suggested amending page 82 of the resolution following the Now, Therefore, Be it resolved clause to add the following language: *“and as approved by the Oversight Board to the Department of Finance for review and final approval”*.

Motion to approve the City **Resolution by title, as amended**, approving the Long Range Property Management Plan (LRPMP) and Submitting said Plan for Final Review and Approval to the Sand City Oversight Board and Department of Finance was made by Council Member Carbone, seconded by Council Member Hubler. AYES: Council Members Carbone, Hubler, Pendergrass. NOES: None. ABSENT: None. ABSTAIN: Council Members Blackwelder, Kruper. Motion carried.

{Council Members Blackwelder and Kruper returned to the dais}

{Council Member Hubler stepped down from the dais due to a possible conflict of interest by residing within 500' feet of the subject property}

D. Consideration and Council Recommendation regarding Hickory Avenue Improvement Project

Mayor Pendergrass commented that the Council received the item this afternoon and mentioned Council Member Hubler's possible conflict.

City Engineer Leon Gomez reported that the attached staff report provides exhibits and estimates for proposed street improvement repair work for Hickory Avenue. He summarized that direction provided to the City Engineer by the City resulted in an improved corridor linking City Hall to the Independent along Hickory Avenue. At the same time, Staff and local residents requested street improvements along Dais Avenue at Holly Street, west towards Hickory Street, to include, improvements to street pavement, curbs, gutters, sidewalks, curb extensions, storm drain

improvement, and other esthetic improvements. Several conceptual layouts were prepared for review and discussion at the Public Safety Committee (PSC) meetings. At the last PSC meeting, an engineer's estimate was provided at approximately \$540,000 dollars. The PSC requested to divide the estimate due to budgetary considerations. The attached street improvement estimates depicts the request for proposed improvements and falls within a \$10,000-\$14,000 difference between each other.

City Administrator Todd Bodem added that Staff is requesting Council direction on which project costs they would like presented to the Budget/Personnel Committee. On behalf of the PSC, Council Member Kruper commented that the committee is pleased with the City Engineers estimates, general opinion, and project exhibits. The Hickory Avenue improvements would be a contribution to the community and provide much safer roads down Hickory to Ortiz Avenue. Council Member Blackwelder added that it has been several years since the City has worked on street improvements since the Catalina/Contra Costa project.

There was Council discussion regarding past street improvement projects, and grant funding. City Engineer Leon Gomez clarified the difference in cost for the Hickory project in response to the Mayor's inquiry. The Mayor requested that Staff research financing sources and available grants for street improvements, and that the item be forwarded to the Budget/Personnel Committee.

There was consensus of the Council that the item be brought to the Budget/Personnel Committee for consideration and return to the Council with a resolution for approval.

{Council Member Hubler returned to the dais}

E. Comments by Council Members on Meetings and Items of interest to Sand City

Vice Mayor Carbone announced that she will be out of town from January 5 through January 16, 2016. The Mayor requested that Staff look into and confirm the January 5th Council meeting date, and whether it is necessary to hold a council meeting due to the holiday and staff availability. There were no other Council Member comments.

F. Upcoming Meetings/Events

The Mayor brought to the Council's attention the dates for the 2016 Sand City Events. He confirmed that the weekend prior to Memorial Day would be the best time to hold the City's annual barbeque. There was consensus of the Council to approve the confirmation of future dates for 2016 Sand City events.

AGENDA ITEM 9, CLOSED SESSION

The City Attorney deemed that there was no need for closed session.

AGENDA ITEM 10, ADJOURNMENT

Motion to adjourn the meeting was made by Council Member Blackwelder, seconded by Council Member Kruper. There was consensus of the Council to adjourn the meeting at 7:36 p.m. to the next regularly scheduled Council meeting on December 15, 2015 at 5:30 P.M.

Connie Horca, Deputy City Clerk