

CITY OF SOLANA BEACH
SOLANA BEACH CITY COUNCIL, SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY,
PUBLIC FINANCING AUTHORITY, & HOUSING AUTHORITY

JOINT **REGULAR** MEETING

MINUTES

6:00 P.M.
Wednesday, July 25, 2012

City Hall / Council Chambers, 635 S. Highway 101, Solana Beach, California
And

Teleconference Location (Roberts) 4300 Wilson Blvd., Suite 250, Arlington, Virginia

The City Council acts as the City of Solana Beach Redevelopment Agency and the Public Financing
Authority.

CALL TO ORDER AND ROLL CALL:

Present: Kellejian, Roberts, Nichols, Campbell, and Heebner.

Absent: None.

Also Present: David Ott, City Manager
Johanna Canlas, City Attorney
Angela Ivey, City Clerk
Wende Protzman, Deputy City Mgr/Community
Development Dir.
Mo Sammak, City Engineer/Public Works Dir.
Marie Berkuti, Finance Manager
Dan King, Sr. Management Analyst

Mayor Kellejian called the meeting to order at 6:15 p.m.

CLOSED SESSION REPORT: (when applicable)

Johanna Canlas, City Attorney, stated there was no reportable action.

FLAG SALUTE:

APPROVAL OF AGENDA:

MOTION: Moved by Heebner and seconded by Nichols. **Motion carried unanimously.**

A. CONSENT CALENDAR: (Action Items) (A.1. - A.3.)

Items listed on the Consent Calendar are to be acted in a single action of the City Council unless pulled for discussion. Any member of the public may address the City Council on an item of concern by submitting to the City Clerk a speaker slip (located on the back table) before the Consent Calendar is addressed. Those items removed from the Consent Calendar by a member of the Council will be trailed to the end of the agenda, while Consent Calendar items removed by the public will be discussed immediately after approval of the Consent Calendar.

A.1. Waive the reading of Ordinances.

Recommendation: That the City Council

1. Approve waiving the text reading of ordinances on this agenda pursuant to Solana Beach Municipal Code Section 2.04.460.

MOTION: Moved by Roberts and seconded by Nichols. **Motion carried unanimously.**

A.2. Successor Agency's Recognized Obligation Payment Schedule (ROPS). (File 0115-30)

Recommendation: That the City Council

1. Receive the Successor Agency's enforceable obligations payment information for the period January 1, 2013 to June 30, 2013.

MOTION: Moved by Roberts and seconded by Nichols. **Motion carried unanimously.**

A.3. State Budget Decision to Suspend Mandated Portions of the Brown Act - Informational Staff Report. (File 0480-40)

Recommendation: That the City Council

1. Receive the report. 2. Adopt Resolution 2012-124 reaffirming the City Council's commitment to transparency when conducting City business at the request of Deputy Mayor Dave Roberts.

MOTION: Moved by Roberts and seconded by Nichols. **Motion carried**

unanimously.

C. STAFF REPORTS: (C.1.)

Submit speaker slips to the City Clerk

C.1. Citizen's Initiative Petition Action Consideration regarding a proposed ordinance relating to the regulation of Medical Marijuana Compassionate Use Dispensaries. (File 0430-20)

Recommendation: That the City Council

1. Provide direction on Council's course of action regarding a potential Ordinance 439 submitted via qualified petition.
 - a. Adopt Ordinance 439 relating to medical marijuana dispensaries. Or
 - b. Submit the ordinance to the voters at the next regular General Municipal Election of November 6, 2012 and adopt Resolutions:
 1. Resolution 2012-120 Submitting A Measure to the Voters
 2. Resolution 2012-121 Written Arguments
 3. Resolution 2012-122 Rebuttal Arguments
 4. Resolution 2012-123 Consolidation of Election - Ballot Measure And/Or
 - c. Order a report and return within 30 days to take action within 10 days.

David Ott, City Manager, stated that the City Clerk received a request for providing options for someone with hearing disability but that since the City was not informed ahead of time, there was no signing available to assist him. He asked if anyone in the audience knew sign language and there was no response.

David Ott, City Manager, introduced the item.

Johanna Canlas, City Attorney, presented a powerpoint (on file) reviewing a summary of California medical marijuana laws, Solana Beach's current zoning law that currently did not allow for medical marijuana dispensaries but that it was not an expressed ban, that a citizen initiative petition was submitted to regulate

medical marijuana dispensaries, that if it passed it would amend the City's zoning code, it would impose operating requirements, provide for sales tax, place limitations on law enforcement, propose operating requirements, including allowable locations and distance requirements. She explained that the proposed distance requirements were not the same as radius measurements used by Council for conflicts on local projects. She said that there were potential legal issues with the submitted petition related to state law preemption, Compassionate Use Act, Federal Law Preemption, and local sales tax.

Wende Protzman, Community Development Director, continued the powerpoint (on file) reviewing the potential maximum concentration of marijuana dispensaries in Solana Beach if the ordinance was passed, which identified 16 areas if the maximum opportunities were utilized which required at least 100 ft. between facilities.

Johanna Canlas, City Attorney, continued stating that Council's options were limited to adopting the ordinance at this time, take the issue to a vote of the people, ordering a report, or placing a competing measure on the same ballot, that the City did not have a current adopted policy on the matter. She stated that Council had been forwarded a memo from her office regarding legal concerns that had been raised which was currently Attorney/Client Privileged.

Council reached consensus to waive their privilege of the City Attorney's memo and release it for public access.

John Byrom stated that he smoked marijuana 20 years and had seen the devastation that it had on families and himself, that he had seen youth use go up since these stores had come into existence, that one thing that the City could do was to make City employees not immune to the legal issues and that employees could be arrested.

Johanna Canlas, City Attorney, stated that a letter from the U.S. Attorney in Southern California had cited a provision that they had limited resources and therefore had to manage them accordingly, that various issues had been reviewed, however, there was always an option to provide for a post election challenge in order to ask a Judge to rule on whether the City should be following a passed ordinance that may conflict with federal law.

Jessica MacElfresh (time donated by Trevor Polischuck and Heather Marsoten) said that she was Counsel to Patient Care, that she had attended Solana Beach schools and grew up in the area, that everyone knew a qualified patient, that the focus should be on the accessibility for patients who were in need of it, that the City Attorney had effectively provided a good review of the issues. She said that there was one consistent factor in all cases which was whether cities must allow store front facilities or whether they had a choice

to ban them and that the issue was not whether the store front facilities for medical marijuana was legal. She continued stating that the code did not require that these facilities provide caregivers, that it allowed people to come together lawfully and had certain protections including nuisance laws. She said that not all people were allowed to enter a collective and that only a member who had a prescription could enter, that the Supreme Court had many options to weigh in over the past years over the issue of federal preemption and strike it down and had not, cited various cases to support her statement, that marijuana was a schedule 1 federally controlled substance under federal law, that the law allowed local jurisdictions to provide for provisions, that the issue of employees being at risk of prosecution had come up regularly and that Arizona had passed a comprehensive medical marijuana act and asked the federal court for direction regarding risk to employees, and that the federal government stated that they had no plans to prosecute employees and that they did not see that plan in the future, and urged Council to let the voters provide direction.

Council and Ms. MacElfish discussed the procedure for restricting entrance to a dispensary by non-member patients which included a locked door, requirements for a doctor's prescription, provide the identification and recommendation, that dispensaries was required to keep records of information of who was treated, and that if a dispensary was not following the laws that it should expect issues.

James Schmachtenberger (time donated by Marcee Levine and Scott Levine) stated that he was the President of Patient Care Association which sponsored the ordinance, that they had turned in more than twice the required signatures exhibiting interest, that past votes on Proposition 19 regarding marijuana legalization had been strong in the city, that there were only three options and that one option for a report would only take up time, and that everyone in the room advocated for safe neighborhoods and did not desire to provide children access. He stated that this regulation decreased childhood use by providing for tracking and limiting the amount of cannabis for non-medical purposes, that childhood use had gone up in San Diego due to some studies, but that other larger scale studies showed that childhood and teen use was lower than it had been in 10 years, and that the typical patient database consisted of ages 45-65 with significant health concerns that were not always visible to others and yet the need for medical cannabis was real.

Council and Staff discussed the anticipation of a need for a report so the memo released this evening would suffice as a comprehensive report, so takes the option off the table.

Council and Mr. Schmachtenberger discussed his quote of teen use on the decrease and that it was a nationwide figure according to the National Institute on Drug Abuse.

Council and Staff discussed the signature status regarding the number of signature that were not valid, that the signature validation continued until 807 were reached, that 500 signatures were not counted during this process since they were considered valid at initial review but may have been valid if they were later matched up with a pending voter registration affidavit affixed to the petition, that the method was to continue to check signatures that were quickly and apparently valid in the system until the required number of 807 signatures were reached, and since the required signatures were reached, there was no need to return to review any prior invalid signatures, that this was the most effective and feasible method for validating signature, that 499 signatures were never counted, and that the required signatures were reached which contributed to the certification of the petition.

Tamara Green stated that she lived in the City, that she was a breast cancer survivor because of medical marijuana, that her cancer was stage 4 and had spread and considered incurable, that she had undergone surgeries, that she suffered from many issues including chronic pain, that she began taking medical marijuana by mouth and had results in 3 days, had graduated from a walker and morphine, that she was an educated individual and an upstanding member of the community, that safe dispensaries was a step in the right direction, that she continued to use traditional treatments in conjunction with the medical marijuana and that she attributed her living this long to the combination options she had or treatment.

Nancy Knott said that she was a counselor at Scripps Drug and Alcohol Treatment Center, that she had a specialty working with adolescents and young adults, held a masters degree in clinical psychology, and had 8,000 clinical hours spent mostly with adolescents and young adults, that she was representing herself, that the latest reading in July 2012 from NIDA was that there was a sharp uptake in use in Grade 12 that was the highest since 1980s, that there was an epidemic of drug addiction in San Diego County, that she had never dealt with an adolescent that did not start drug use with marijuana initially, reported statistics of use reported by teens, that teenagers walked around with marijuana cards with increased arrogance.

Ed Mattson said he was a 50 year old man, that he lived with chronic pain and migraine headaches, that the course of treatment had been heavy drugs that left him incoherent and confused, that he could not take aspirin any longer due to ulcers, that he had never intended to turn to medical marijuana but since he did he was better, that he could not leave home before and was now a college student.

Mark Mattson stated that he was a cancer survivor, had two treatment cycles of chemotherapy and radiation that had left him with bad joint pains, that he had not slept more than 4 hours a night since 2008, that he tried everything

with several adverse reactions, that he had never smoked pot growing up, and that nurses suggested it and that it had worked for him.

Nancy Logan stated that a recent report showed that 19% of teens were driving under the influence of marijuana, that 1/3 of them did not think it affected their driving ability, that the San Dieguito district discovered through their surveys that more kids were using marijuana than tobacco, that the perception of its harm had decreased, she had never seen anyone in their 40's using these facilities and that they were all young people and that they were all young people smoking on the premises, and that she had assessed these shops for years.

Barbara Gordon stated that the debate had nothing to do with medicine or compassion or the terminally ill and everything to do with the safety of the community, that a dispensary in the neighborhood gave the wrong message to youth, that the state had provided for access to marijuana through collectives or cooperatives but not through dispensaries, that the City needed to consider the legality of allowing a dispensary in the City, that many cities had banned pot shops but had increased crime and blight since there was an increase in use, and that the community had failed to recognize the pro-marijuana use by allowing it to be sold out of store fronts.

Rebecca Hernandez passed out a document (on file) and said that this drug was interrupting young people's lives, that it was a poorly written initiative, that it would cause changes in the City's current code, that it put the City in a position to oppose federal and state laws, that the trend of use was up, and asked Council not to play a role in industrializing drug use.

Council, Staff, and Ms. Gordon discussion ensued regarding that the law being intended for medical marijuana to be distributed through a cooperative or collective and was never intended to be sold out of a dispensary.

Johanna Canlas, City Attorney, stated that a Compassionate Use Dispensary (CUD) was defined as being 10 or more qualified patients, persons, with identification cards who associate or as incorporated or incorporated association within Solana Beach in order to collectively or cooperatively provide medical cannabis from a licensed or permitted location pursuant to this chapter for use exclusively by registered members, that this definition as submitted as part of the petition, and that it seemed to intend that it was not for retail sale, not clear if it was for retail sale.

James Schmachtenberger responded to Council's inquiries and stated that the Attorney General guidelines from 2008 and said that patients could collectively or cooperatively associate for the distribution of medical cannabis, that a dispensary reference a store front but that all dispensaries were either a collective or a cooperative which had to do with how they were legally incorporated.

Farid Wardak stated that he was a 19 year old student, that he had Tourettes since he was 6 years old, that he had been prescribed several harmful drugs that had left permanent damage to his facial and bodily twitches, that he had stopped prescription drugs and had recently begun using medical marijuana when it was recommended a few weeks ago, and that he was more calm now.

Chris Tanks said that regulation decreased the ability for youth to access drugs.

Bradley Moore (time donated by Candace Rokosz and Kirsten Fillius) said he had massive nerve damage to his arm, the leading cause of death of RSD was suicide, that he used fentanyl for 12 years to control the pain and was more potent than street heroin, that he did not sleep, that fentanol caused memory loss including the birth of his daughter, that he took medicinal cannabis and slept for 7 hours and was conscious the next day, that he was now working. He had 9 surgeries, considered suicide as an alternative to existence, and that most people eat the marijuana rather than smoke it.

Cynara Velazquez (time donated by Charles Wilburn and Vicki Kraft) handed out a pamphlet of information (on file), and said that over 1,800 people signed the petition, and that those not validated were not invalid but had moved and updated their registration, that only the signatures required were validated, that those who signed the petition did so with the intention of it being placed on the November ballot, that it was a alternative to the current restricted delivery system for patients and that it was important to convince the community, that the initiative included the restriction to felons operating a dispensary even though the state law was silent on the issue, that the act was passed 16 years ago, that if eventually something in the initiative did not comply with future law then that would take precedence, that this Council had been proactive in taking a stance on items like plastic bags, and that there was some allegation at the City of Del Mar regarding the potential invalidation of collecting taxes, that the zoning map shown with the maximum locations shown with the perfect distancing which allowed 16 dots on the map. She continued stating that there was a separate waiting room from another room where the actual patient is being validated, and then another room where dispensary takes place, which does not allow non-patients, that if a condition was imposed by the Council then a dispensary may not be approved, that permits could be revoked by the power of the Council, if a condition was not met could be revoked, that the initiative provided for a criteria to obtain a license, that there had never been a reported death by medical marijuana, and that no smoking was permitted on the premises.

Council and Ms. Velazquez discussed that dispensaries were not allowed in residential zone, that a recent law that was not passed that would have restricted a certain distance from residents, since apartments in a downtown area would make it difficult, that an estimated number of jobs would be 8 people in 3-4

dispensaries might be an estimate, that hours of operation were provided as a limit but that all dispensaries would not be open for those hours, many are not open in the morning, and that smoking at the location would probably not be an issue since smoking was banned in most public properties in Solana Beach or may be prohibited by a commercial property owner.

Council and Staff discussed that where the initiative was silent and a condition or violation was under the City's jurisdiction, that the City may be able to impose certain regulations, and that it would take of vote of the people to modify the chapter.

Mary Jane Boyd said that she appreciated the complete and thorough report, that it was more than 16 years the Compassionate Use Act was passed, that there had been a strong campaign to undermine this California law, that she was a registered nurse and had a degree in psychology and former teacher, served on the school board for many years, worked with HIV patients for more than 20 years, had run support groups, and spent years of experience with hospice and terminal illnesses, and the related pain, depression and stress. She said that knew of the benefits of medical marijuana to assist patients with symptoms that provided relief, that she understood the concern regarding youth and that all medications especially pain medications were subject to abuse, and that it was time to address the use through regulation and control and recognize the therapeutic benefits of marijuana, and that she agreed with recognized organization that supported the legalization for medicinal marijuana.

Steve Hirsch stated that he had survived Lou Gerigs disease which destroys the lungs, that he had been prescribed many pain medicines and that after 6 years of medical treatment there was irreversible damage due to the meds, and that the only relief he had found was med cannabis.

Darlene Bigos stated that she worked with youth in Houston and saw the damage to families socially, that she was a local resident living in Del Mar, that she was married to someone addicted to marijuana, she was surprised to learn that there could be more than one dispensary in Solana Beach, and that most people would not wan to live near a store front, which could happen in a small town.

George Manahan stated he was a member of the Public Safety Commission in Solana Beach, that he encouraged ordering a report taking the full 30 days despite the efforts that City Attorney made to rush an early report, that the issue was not whether certain patients should get access but whether this was the right ordinance for the right community, that voters were entitled to the full information, and that a lot of money in this industry motivated this flawed ordinance.

Council and Staff discussion ensued regarding the fact that ordering a report would not change the proposed ordinance, that it could be on the 2014 General Election of possibly a special election, that the current report was rushed but had been analyzed since March, that a post election challenge could be enacted if something appeared to be unlawful, that the estimated cost to add it to this general election was \$5,000-9,000 and that a special election was last estimated to cost \$225,000.

Ben Doyle stated that the people of Solana Beach get 10% of the voting population to direct the ordinance to the valid, that he had made a comment in the Del Mar Registrar that was misquoted and wanted to clarify that traffic fatalities were decreased after medical marijuana was legalized according to a study by a University in Germany, that studies showed that prescription drugs had attributed of driving incidents including sleeping pills which were readily available.

Daunte Tirealo said that he had broken his neck twice and used multiple medications and that medical marijuana gave the most multiple symptom relief, that security was pretty good at these facilities, that there was no real difference between a dispensary and pharmacy, that he was always anti-drug and did not try medical marijuana until his 30's to address pain, that he had observed a dozen dispensaries and some were in poor neighborhoods, and that he had never witnessed smoking on the premises since it was not allowed.

Martha Sullivan said that she was a neighbor of the City, that her cause was medical marijuana over the last few years because she had family and friends who were patients, that this Council had been a leader in public policy, cited when women were granted to vote and the fears of allowing that right or the issues during prohibition, and encouraged Council to be a leader remembering these past issues.

Dean Scott said that he had dispensary held up at gun point in the area, that he had compassion for those with medical issues but that was not the debate, the issue was allowing pot shops in Solana Beach, that he was told by those holding cards that one could obtain a card if they were reported to have anxiety.

Evelyn Hogan said that she had three sons, she was a drug and alcohol counselor, that marijuana devastated families, she had two sisters die from cancer who never used medical marijuana but choosing to have clear minds, that her son went to a doctor and got a recommendation for marijuana for an ingrown toe nail and got into a car crash two weeks later, she had a nephew that used it and had schizophrenia and committed suicide and there was proof that marijuana could cause depression and suicide, that her biggest concerns were regarding the locations that have tried to be located near a AA Club without consideration of how that might affect that group, and that it was a campaign

to undermined the federal law.

Kathy Uppit said that she was a public health practitioner, that there were flawed studies and that marijuana had devastating affects on youth, that use was at a 30 year high nationally, San Diego Unified found a 70% increase in use, that teens believed there was a difference between marijuana and medical marijuana and there was no difference, the term patient was used to describe the relationship between an unlawful marijuana store front dispensary when they are simply customers, that the term prescription continued to be used when the accurate term is recommendation since physicians were prohibited by law to write a prescription of a schedule 1 drug, that we would never interfere with those who grow and use in their own home, that if one could not obtain from compassionate users there were hundreds of delivery services preventing the need or store fronts, that attempts to prohibit teen's access to alcohol had failed, that the answer was not legalization nor regulation but primary prevention, cited statistics of costs to the state for alcohol and drug abuse.

Judy Strang said that she had been dealing with the subject for 20 years and the pain at it caused families, passed out a bag that she said contained items from pot shops found near Carmel Creek, that it was irritating to use compassion of those suffering regarding this subject, that the state did not allow the sale of marijuana from a retail setting and that was what this initiative was requesting, that the initiative was flawed and that Council should take 30 days to do a more complete report, and that a thorough discussion was needed to consider the initiative limitations on law enforcement.

Nicole Haymes said that her children were good kids, that she was up front with her kids and educated them, that she used medical marijuana for chronic pain with Fibromalgia, that no one took it seriously, that the issues prevents stage 4 deep sleep, that medical marijuana had helped her sleep, that he kids did not go drugs, that she was not terminal and that she would have to live with the pain the rest of her life, that she had a hard time accessing it using public transportation, that the pain specialist only recommended strong drugs, and that it had done wonders for her.

Carol Green said that she did not put in the correct name for a slip. Council allowed her to speak. She said she was from Chula Vista and was concerned since her youngest child was 16 years old and could drive to Solana Beach, and that she did not think that Solana Beach would want to expose itself to those types of store fronts.

Deputy Mayor Roberts thanked the speakers and said that the Council was under a deadline since the Council was required to act and that the matter needed to be resolved by August 10th if we would proceed with an election, that it they waited a potential special election could be presented significantly

increasing the cost, that petitions, even badly worded, had to be acted on by the voters, and therefore recommended approving the four resolutions.

Councilmember Campbell stated that he would second Roberts motion, that there were passionate statements, that the issues before Council was not to weigh the pros and cons of the use of medical marijuana, that his personal feelings were not relevant to this discussion, that they had two options and needed to make a decision, and would support the motion.

Councilmember Nichols said he appreciated the speakers, that he agreed that Council had two options and felt strongly that it was up to the people to vote, and that is it was discovered that there were legal issues that the Council had the option to consider a post election challenge.

Councilmember Heebner said that she agree with what Council had stated, that she would support the motion, and thanked everyone for their comments.

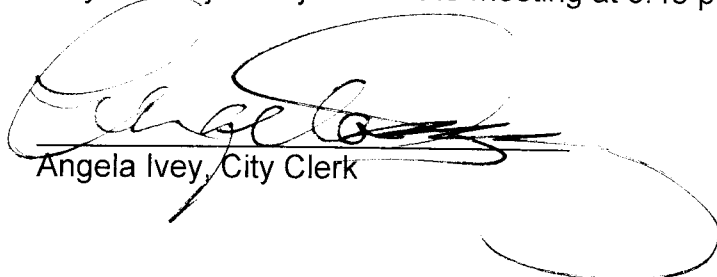
Mayor Kellejian stated that he appreciated Council's comments and would support the recommendation, that his personal thoughts on the matter were that his job was protect the health, wealth and safety of the community, that he did not believe that putting this type of business in Solana Beach would protect the community, that marijuana should be distributed in a controlled environment such as hospitals or medical clinics, and that for these reasons he would support taking it to the ballot but that he be working to oppose the proposition.

MOTION: Moved by Roberts and seconded by Campbell to approve resolutions and place the proposed citizen initiative on the November ballot. **Motion carried unanimously.**

Council Community Announcements

ADJOURN:

Mayor Kellejian adjourned the meeting at 8:48 p.m.



Angela Ivey, City Clerk

Approved: October 10, 2012