



# MINUTES

## Regular Meeting of the Planning Commission

**MONDAY, October 9, 2017**

City Council Chambers  
1 Civic Center Drive, San Marcos, CA 92069

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### **CALL TO ORDER**

At 6:32 p.m. Planning Commission Chair Flodine called the meeting to order.

### **PLEDGE OF ALLEGIANCE**

Commissioner Kildoo led the Pledge of Allegiance to the Flag.

### **ROLL CALL**

The Secretary called the roll:

PRESENT: COMMISSIONERS: FLODINE, JACOBY, KILDOO, MATTHEWS, NORRIS, OLEKSY, SCHIAIBLE (Alternate)

ALTERNATE COMMISSIONERS IN AUDIENCE: None

ABSENT: MINNERY, MAGEMENEAS (Alternate)

Also present were: Planning Manager, Karen Brindley; Deputy City Attorney, Avneet Sidhu; Deputy City Attorney, Wendy House; Principal Planner, Joe Farace; Office Specialist I, Susie Neveu

### **ORAL AND WRITTEN COMMUNICATIONS**

None.

### **CONSENT CALENDAR**

#### **1. APPROVAL OF MINUTES - 9/5/17**

*Action:*

COMMISSIONER JACOBY MOVED TO APPROVE CONSENT CALENDAR AS PRESENTED; SECONDED BY COMMISSIONER OLEKSY AND CARRIED BY A MAJORITY VOTE WITH KILDOO ABSTAINING.

### **PUBLIC HEARINGS**

#### **3. Project No: TA17-0004, ND17-006**

**Applicant:** City of San Marcos

**Request:** Consideration of (i) proposed Ordinance prohibiting commercial cannabis activities, the outdoor cultivation of cannabis, the indoor cultivation of cannabis in excess of what is permitted under the "Medicinal and Adult-Use Cannabis Regulation and Safety Act," and the use and possession of cannabis and cannabis products in public places, places where smoking is prohibited under the San Marcos Municipal Code and otherwise, and within buildings owned, leased or occupied by the City, and (ii) proposed Negative Declaration. The Planning Commission will provide a recommendation to the City Council regarding (i) amendments to Title 20 regulations (Zoning Ordinance) under the proposed Ordinance, and (ii) the proposed Negative Declaration.

**Environmental Determination:** A Negative Declaration (ND 17-006) was prepared for this project and circulated for public review pursuant to the California Environmental Quality Act (CEQA).

**Location of Property:** City-wide.

**Staff Presentation (Wendy House):**

PowerPoint presentation shown. Stated that the purpose of the Text Amendment is to expressly prohibit certain cannabis operations, uses and activities, including commercial cannabis activities, and the outdoor cultivation of cannabis as well as to reasonably regulate the personal indoor cultivation of cannabis consistent with state law. The proposed regulations are within the City's authority under state law and are a valid exercise of the City's powers to continue protecting the health, safety and welfare of City's residents and businesses. Under Federal law since 1970, the possession, sale and distribution of both medicinal and non-medicinal cannabis has been and continues to be prohibited by Federal law under the Controlled Substances Act. Under state law, prior to 2016 when City last updated its cannabis regulations, the state permitted cannabis only for medicinal purposes through a voluntary state authorized program for qualified patients or their primary care givers to possess a medical marijuana ID card. Through the program, the state limited the amount of cannabis an individual could possess, and exempted patients and primary caregivers from criminal prosecution under state law for the use, possession and cultivation of cannabis for medicinal purposes. In November '16, CA voters approved the Control, Regulate and Tax Adult-Use of Marijuana Act, known as Prop 64, to allow those 21+ to smoke, ingest, or otherwise use non-medical marijuana and marijuana products, to purchase, possess, transport, obtain or giveaway without compensation to those 21+ up to 28.5 grams of marijuana or 8 grams of concentrated marijuana or to cultivate or process up to 6 living plants for personal use. In June '17, the governor signed into law the Medicinal and Adult Use Cannabis Regulation & Safety Act, or MAUCRSA, to create a single state regulatory system for medicinal and non-medicinal commercial cannabis businesses. The City has prohibited certain operations, uses and activities since '06 under Chapter 5.54 (SMMC) and under the Zoning Ordinance. Currently, the City prohibits dispensaries, manufacturing and processing but does not prohibit non-medicinal cannabis dispensaries or other commercial cannabis activities, which will soon be licensed by the state and permitted to operate unless prohibited by the City. The City also prohibits commercial cultivation and processing of marijuana but doesn't allow personal cultivation indoors which is now required by state law, or regulate the cannabis cultivation indoors. Prior to and anticipation of the passage of Prop 64, the City Council adopted a temporary moratorium on all cannabis operations, uses and activities authorized

under state law, which they voted to extend through Sept. '18. Discussed the proposed amendments of SMMC Chapter 5.54 and Zoning Ordinance. Discussed Prohibited Uses, Specific Use Standards and new definitions. A Negative Declaration was prepared and circulated for public review. No public comments were received. There were no environmental impacts identified. Staff recommends adoption of Resolution PC17-4660 to recommend approval of TA17-0004 to City Council and adoption of ND 17-006. Regulating cannabis is necessary in preventing the adverse impacts it may have on nearby residents and properties.

Oleksy: Read aloud from a prepared written statement. In his opinion, based on materials given to him and presented, he feels the City has failed in its obligation to provide a fair and fact-based assessment of the potential impacts of cannabis operations in the City. The materials he reviewed provide only anecdotal evidence of negative impacts that don't stand up to scrutiny when viewed in the context of other businesses that operate legally within the City. (Continued to read entire statement). The City must look at overall crime rates in cities that have legal dispensaries and determine if cannabis operations have a statistically significant negative effect on such crime rates. There's a failure to cite any evidence from WA or CO, where recreational cannabis has been legal for several years. The City has had time to study the topic. He cannot support the current proposed ordinance because the City has failed to present sound evidence on the social, financial, environmental and criminal impacts that such operations may have. Inquired what percentage of industrial and light industrial is currently vacant?

Farace: Indicated approximately 6.9%, however that includes a vacant square footage for San Marcos Studio's which equates to a notable percentage. Minus that, it's closer to 4.5% vacancy.

Oleksy: Asked what the lost revenue is to City for the vacant spaces?

Farace: Staff doesn't currently have the information available but could look into it.

Oleksy: Pointed out that noxious fumes and water use was mentioned in the materials. Asked how many businesses in the City operate under regulations by CA EPA for hazardous waste/materials, impacted ground and surface water and toxic releases?

Farace: Replied that County DEH website indicates 427 businesses or uses in San Marcos have DEH issued permits for hazardous materials.

Oleksy: Inquired how many businesses are licensed to serve beer and wine?

Farace: According to ABC website, it's 74.

Oleksy: Asked how many are licensed to serve liquor?

Farace: Per ABC it's 27.

Oleksy: Asked if that's in addition to the 74?

Farace: Indicated 74 for on site beer & wine, plus 27 for liquor.

Oleksy: Inquired how many micro-breweries operate, how many have tasting rooms and their operating hours?

Farace: Currently eight and all have tasting rooms; hours are generally 1 PM – 8 or 9 PM.

Oleksy: Asked how many businesses are licensed to sell alcohol?

Farace: Total is 169 and includes the 74 & 27 mentioned earlier.

Jacoby: Asked about Zoning Ordinance and if Fire Department would be checking the locations growing cannabis? Would consumers be checked by Police if there's access to cannabis where alcohol is served?

Farace: Under the proposed regulations, there wouldn't be a prohibition for commercial cannabis sales within City limits, so those wouldn't be an issue. There is an allowance for personal cultivation growing within a residence. There are provisions in terms of building code compliance and the requirement for a fire extinguisher. It would not be checked, it would be a by-right allowance.

Schaible: Explained that there's violence associated with the dispensaries and other activities because the proprietors can't use banks. There's a lot of cash on hand and it's still illegal federally under the Controlled Substances Act. The City's effort to tighten the ordinance and make it more regulated and safer is a good idea.

House: Indicated that he's correct. The operations are illegal under Federal law and they cannot put their money into banks, which is why there are so many robberies, burglaries and gun crimes.

Matthews: Questioned where the nearest dispensary is for medical cannabis?

House: Santee, La Mesa, Lemon Grove and San Diego and they allow delivery services. The City is maintaining the status quo regarding medical cannabis. Wherever San Marcos residents obtain theirs now is not being changed.

Norris: Asked for confirmation regarding number of plants?

House: Explained that whatever state law permits that the City is not permitted to regulate, they'd continue to allow, as well as indoor cannabis. The ordinance focuses on the commercial aspects of the businesses.

Norris: Asked what happens if the Fed comes in?

House: The existing administration says they won't enforce, but that could change. Anything the state law allows City to prohibit or regulate, we're doing so under the proposed regulations.

Flodine: Indicated he has concerns on the enforcement side, but that isn't under their purview. Planning Commission is land use and some of the items are not land use-related. If City doesn't make own rules & regulations, the state will impose its own.

House: That's correct, effective January 1, 2018, the state will be issuing licenses unless local jurisdictions have an ordinance in place.

Flodine: Acknowledged Oleksy's concerns, but there isn't much time for City to finalize ordinance.

Oleksy: Asked if the emergency ordinance that goes through September '18, does not count as being an ordinance on the books?

House: Stated they adopted the final extension, but they don't feel they need it because they have done an extensive amount of research. They did look into WA and CO studies and reviewed Federal task force studies that show negative impacts, and they've reviewed evidence that refutes that. It's back & forth so they didn't include it in the staff report. They added actual statistics, armed robberies and murders and included the armed robbery of an illegally operating dispensary in San Marcos. Information included legal and illegal dispensaries. They feel they've spent a lot of time researching and are confident there's an increase in crime. The extra tax revenue doesn't make up for the negative costs of enforcement, first responders, traffic accidents, administrative, etc. If not adopted by January 1<sup>st</sup>, the state can start issuing licenses. Revisions and amendments can be made later.

Oleksy: Inquired if staff was aware Prop 64 passed in City by a margin of 10 points?

House: Responded yes, but pointed out they may not be supporting the commercial component. They may have voted to authorize the personal use and consumption.

Oleksy: Reminded group that this would be a complete ban, including the ability to recoup any revenue from the state or the taxation of these operations.

House: Stated that's consistent with the status quo. They couldn't just impose a tax; it would require a vote of the people. It must pass on a ballot measure in order to collect the revenue.

Oleksy: Doesn't believe that sales tax would require a vote.

House: A tax on marijuana, for local revenue, would require a vote. Whatever the state imposes isn't what the City will receive.

Oleksy: Asked if City would receive some tax benefit from sales tax?

House: She's not aware what portion the City would receive. By prohibiting, the City wouldn't receive grants.

Norris: He read that the state would tax it, and then gives some of the money to the City.

Kildoo: Pointed out the City only gets 7.5% on the dollar in property tax, so probably not a lot.

Norris: Feels it's something to consider.

#### **OPEN PUBLIC HEARING**

No requests to speak.

#### **CLOSE PUBLIC HEARING**

Jacoby: If City has an ordinance where alcohol facilities are located a certain distance from schools, would restrictions be the same for cannabis growing?

House: For personal indoor growth, it cannot be visible from public right-of-way, so there wouldn't be additional restrictions regarding school locations. City isn't allowed to restrict that component and can only impose reasonable limitations, so long as it complies with state law. Also not sure there would be a way to enforce that.

Norris: Added that someone could brew or make wine in their house and that's not restricted.

Flodine: Inquired about rental units. If anyone violates, is the tenant or property owner responsible?

House: There's a proposed regulation that would put property owner or manager on the hook if it were a business engaging in commercial cannabis activity. As far as a personal residence, they aren't holding the owner accountable, unless the owner knew they were operating a business.

Norris: Asked if the City could regulate a business to grow, but not sale?

House: It's possible, but that would be a policy question for the Council members to decide. The state does license different operations and activities, cultivation and growing, and dispensaries. There is evidence that the dispensaries have a high rate of burglaries and it costs more for enforcement. In some incidents, security guards and customers have been shot and killed. It's something to consider if you want to bring it into your jurisdictions. Explained that the City can watch and see what other cities do, re-evaluate and bring back to Council and make amendments.

Flodine: Feels the item is about local control and not whether they agree on commercial cannabis. If they don't impose some sort of regulations or blue print before January deadline, then Sacramento comes in and tells City how it's run. It's a placeholder to say we have something on the books. It can be

monitored; they'd have more time, maybe get public input, and hold a workshop. There's still more to work out. Some points made in the report regarding negative impacts could probably be found around liquor stores also.

Kildoo: Agreed with Flodine. Feels they need to establish the ground rules and make changes later if needed.

**Action:**

COMMISSIONER KILDOO MOVED TO RECOMMEND APPROVAL TO CITY COUNCIL OF TA17-0004 AS SET FORTH IN RESOLUTION PC 17-4660, AND ADOPTION OF MITIGATED NEGATIVE DECLARATION ND 17-006; SECONDED BY COMMISSIONER SCHIABLE AND CARRIED BY THE FOLLOWING ELECTRONIC VOTE:

Oleksy: Indicated he'd now support it as long as it will be monitored and looked at. They don't want the state to do it. Feels there could be potential, perhaps not selling it here but laboratory testing, and research and development. He doesn't want the City to lose out on revenue. It could be good for the City overall compared to other industries that operate here.

AYES: COMMISSIONERS: FLODINE, JACOBY, KILDOO, MATTHEWS, NORRIS, OLEKSY,  
SCHAIBLE  
NOES: COMMISSIONERS: NONE  
ABSENT: COMMISSIONERS: NONE  
ABSTAIN: COMMISSIONERS: NONE

**PLANNING MANAGER COMMENTS**

Brindley: Thanked Commissioner's for their dedication and service to the City. There was a recent Volunteer Appreciation event held and City Council provided Certificates of Recognition to the Commissioner's. (Read aloud & passed out). She appreciates their reading the large packets with technical information, coming to meetings prepared, asking valuable questions and making informed decisions.

**PLANNING COMMISSIONERS COMMENTS**

Norris: Indicated he hadn't heard back about the electrical charging stations discussed at last meeting. Stated he'd miss the next meeting but would like to review packet and provide comments for the hearing?

Sidhu: Indicated she'd get back to him regarding that possibility.

Brindley: Stated there's a boilerplate condition from the Building Division for compliance with CalGreen building code as it relates to parking lots. It varies from bike storage, dedicating space for

car/van pools and clean air vehicles. It's based upon a percentage of the total amount of parking. Staff is mindful of that and taking close consideration upon review of plans.

Kildoo: Spoke about last Sunday's Street Fair and indicated he answered questions about San Marcos Creek District and University District. People overall were very happy with City, except for traffic. There were no inquiries about the Fenton project.

**ADJOURNMENT**

At 7:30 p.m. Chairman Flodine adjourned the meeting.



ERIC FLODINE, CHAIRMAN  
CITY OF SAN MARCOS PLANNING COMMISSION

**ATTEST:**



LISA KISS, OFFICE SPECIALIST III  
CITY OF SAN MARCOS PLANNING COMMISSION