

**MINUTES OF A MEETING OF
THE LEMON GROVE CITY COUNCIL**

August 15, 2017

The City Council also sits as the Lemon Grove Housing Authority, Lemon Grove Sanitation District Board, Lemon Grove Roadway Lighting District Board, and Lemon Grove Successor Agency

Call to Order

City Councilmembers present:

Mayor Racquel Vasquez, Mayor Pro Tem Jennifer Mendoza, Councilmember David Arambula, Councilmember Jerry Jones, and Councilmember Matt Mendoza.

City Council Members absent:

None.

City Staff present:

City Manager, Lydia Romero; Sheriff's Department, Lt. Scott Amos; Development Services Director, David De Vries; City Clerk, Susan Garcia; Assistant City Manager/Public Works Director; Mike James; City Attorney, James P. Lough; and Fire Chief, Colin Stowell.

Pledge of Allegiance

The Pledge of Allegiance was led by Mayor Pro Tem J. Mendoza.

Presentation

The "Lemon Grove History Minute" video was presented that featured former Lemon Grove Recreation Director, Nancy McCadam.

Mayor Vasquez presented a proclamation declaring September as Disaster Preparedness Month.

Andy McKellar, Heartland Fire and Rescue Emergency Preparedness Coordinator, provided a presentation for emergency preparedness.

Public Comment

Michael and Beckie Perez reported that they are the owners for the property next to City Hall. Their intent with the property is to assist single women, through their pregnancies.

John L. Wood commented on a flag at a local business that isn't illuminated, weed abatement, and the City's municipal code that allows marijuana dispensaries.

Brenda Hammond commented on issues with the homeless population in Lemon Grove.

Anita Lopez, representing Lemon Grove Heal Zone, commented on their recent conference in Long Beach, to promote health, wellness, and chronic obesity. She expressed appreciation to Mayor Vasquez for her participation at the conference.

Cynara Velasquez, Citizens for Patient's Rights, commented on a recently submitted citizen's initiative, to amend the City's current medical marijuana dispensary ordinance.

1. Consent Calendar

A. Approval of City Council

August 1, 2017 Regular Meeting

B. Ratification of Payment Demands

C. Waive Full Text Reading of All Ordinances and Resolutions on the Agenda

D. Reject Claim

E. Reject Claim

F. Reject Claim

G. Reject Claim

H. Reject Claim

I. Reject Claim

J. Reject Claim

K. 2017-18 City Council Priorities

Action: Motion by Mayor Pro Tem J. Mendoza, seconded by Councilmember Jones, to approve the Consent Calendar passed, by the following vote:

Ayes: Vasquez, J. Mendoza, Arambula, Jones, M. Mendoza

2. Authorization to Advertise a Request for Proposal for the Pavement Management Program Update

Mike James reported that on January 5, 2010, the City Council adopted a Pavement Management Program (PMP) that was performed by Nichols Consulting Engineers. The PMP is a tool that allocates limited resources toward the process of selecting the proper street treatment, in a timely manner, to prolong the street conditions over the entire street network. The chief benefit of using a tool like the PMP is to avoid costly repairs to the street network by acting sooner rather than later, because it is less expensive to keep good roads in good shape, than to repair worse roads at a later date.

On May 23, 2017, at the Street Rehabilitation Workshop, the City Council received information about the PMP, the City's current pavement condition index, and staff's recommendation to move forward to update the PMP.

The request for proposals highlights the following; review all historic data about the City's pavement management program, evaluate the current street conditions, create a five-year list to repair City streets, utilizing all anticipated funds, and provide software training to City staff, in order to manage the program during the five year period.

Councilmember Jones asked if a sub-surface analysis could be included in the request for proposal.

Lydia Romero stated that the sub-surface analysis could be bid as a separate item.

Mayor Vasquez stated that the City Council authorizes City staff to advertise the request for proposals.

Public Speaker(s)

There were no requests from the public to speak.

3. Public Appeal to Consider Appeal No. AA1-700-0002 Regarding the Denial of Zoning Clearance No. ZC1-700-0010; a Request to Apply for a Conditional Use Permit to Establish a Medical Marijuana Dispensary at 8249 Broadway in the General Commercial Zone

Mayor Vasquez noted that the City received an email from the applicant's attorney which stated that Rodi Mikha, on behalf of Iden's Investment, LLC is withdrawing the Appeal number AA1-7000-0002 for the denaul of the zoning clearance number ZC1-700-0010 for a proposed medical marijuana dispensary at 8249 Broadway. They accept staff's decision in the matter.

4. Public Appeal to Consider Appeal No. AA1-700-0003 Regarding the Denial of Zoning Clearance No. ZC1-700-0012; a Request to Apply for a Conditional Use Permit to Establish a Medical Marijuana Dispensary at 8260 Broadway in the Heavy Commercial Zone

David De Vries reported that this appeal hearing was scheduled for the July 18, 2017, City Council meeting and was continued by the City Council to August 15, 2017, at the applicant's request.

In November 2016, voters in the City of Lemon Grove passed Measure V, an initiative removing the City's prohibition of medical marijuana dispensaries (MMDs) and establishing performance standards and a permit process by which MMDs may be established. Measure V was subsequently codified in Chapter 17.32 of the Lemon Grove Municipal Code. The permit process for MMDs requires approval of a conditional use permit (CUP), and the performance standards prohibit MMDs on properties within 1,000 feet of certain protected uses, including schools and licensed daycare facilities. Schools include any public or private school providing instruction in kindergarten or grades one to 12. See Lemon Grove Municipal Code Section 17.32.090.

The purpose of this appeal is to determine whether a MMD is allowed to proceed with a conditional use permit application based on a determination that the subject property is within 1,000 feet of a protected use, in this instance a school and licensed daycare facility. Staff contends that it has discovered appropriate evidence and made appropriate measurements to justify that there is both a school and a licensed daycare facility within 1,000 feet of the subject property. The appellant contends that the subject property is not within 1,000 feet of the protected uses.

In order to identify and map the location of protected uses, staff relied on a variety of resources including, but not limited to, the website Greatschools.org and the website for the California Department of Social Services (DSS). DSS is the licensing agency for daycare throughout the State of California. City Council should note that the DSS Website reveals the locations of licensed daycare conducted in commercial and institutional settings, but does not reveal the locations of family daycare homes, which are conducted in private residential settings. To provide the public with a map identifying potential locations for MMDs, while protecting the locations of family daycare homes, City staff created a draft map with 1,000 foot buffers around the parcels where known protected uses are located. Staff then made those buffers opaque to obscure the underlying parcel geography.

On March 7, 2017, staff presented a report to City Council describing the recommended draft review procedures and draft conditions of approval for requests to establish MMDs. Staff also presented the draft Medical Marijuana Zoning Map it had created.

The review procedures include using the Zoning Clearance (ZC) process as the initial step in screening and reviewing of MMD applications. Complete ZC applications for sites which meet the zoning criteria and distance restrictions described in LGMC Chapter 17.32, and which include all required application materials will be deemed complete, and the applicants may then submit for CUP approval by the City Council. ZC applications for sites that do not meet the specified criteria are denied by staff. Staff's decision to deny any application is subject to appeal to the City Council, pursuant to LGMC Section 17.28.020(l).

On April 6, 2017, the appellant filed ZC1-700-0012, an application to apply for a conditional use permit to establish a MMD at the subject property. Prior to accepting the application, staff checked the location of the project site on the Medical Marijuana Zoning Map and determined it was ineligible for a dispensary. Staff then informed the appellant that the proposed project site was within 1,000 feet of a protected use, and therefore staff would have no option but to deny the ZC application.

The appellant chose to file the ZC application despite staff's admonishment, and on April 17, 2017, the Development Services Director denied ZC1-700-0012. On April 20, 2017, the appellant filed AA1-700-0003, an administrative appeal of the Director's decision. The appeal states "The denial letter does not state the specific school or state licensed daycare home and therefore has not put the applicant on notice for the reason for denial. However, the only potential sensitive use is Saint John of the Cross and this school is more than 1000' from the proposed use". See the attached exhibit prepared by staff depicting the location of the site in relation to the church property.

On May 8, 2017, staff sent a letter to the appellant acknowledging receipt of the appeal, informing him that the appeal hearing date would be July 18, 2017, and advising him to submit any additional information he wished to provide prior to the hearing. In the same letter, staff disclosed that the protected use affecting the subject property was Saint John of the Cross Catholic Parish located at 8086 and 8175 Broadway. It should be noted that the letter includes an error. The error noted is that the subject property is located 822 feet west of the church, when in fact, the subject property is located approximately 822 feet east of the church's property. As of August 9, 2017, no additional information has been received, excepting additional information from the appellant's legal counsel which was received prior to the July 18, 2017 City Council meeting. The appellant's legal counsel did contact staff and agreed to the July 18, 2017, hearing date.

On May 23, 2017, City staff received a letter from the staff at Saint John of the Cross Catholic Parish. The letter verifies that all three parcels comprising the church property are utilized in the conduct of the school and the daycare program. For example, the school uses the auditorium on the eastern parcel to conduct school-related events and to serve school lunch on a daily basis. The church also uses the youth center located on the eastern parcel to conduct daycare activities.

Saint John of the Cross Catholic Parish owns three adjacent parcels on the north side of Broadway. All three of these parcels comprise the church site. The western parcel is developed with school classroom buildings, a playground, meeting rooms, parking facilities, and landscaping. The center parcel is developed with the church sanctuary, parking, and landscaping. The eastern parcel is developed with a meeting hall used by the Knights of Columbus, a youth center, and an auditorium with more parking and landscaping. The appellant has correctly indicated that the portion of the site developed with classroom buildings is the western parcel, and that parcel is slightly more than 1,000 feet from the proposed dispensary site.

However, staff has verified that the church utilizes all three parcel in the conduct of the school and daycare facility. The youth center located on the eastern parcel is used for daycare, and the auditorium also located on the eastern parcel is used daily to serve lunch to the students. The auditorium is also used to host special events and presentations for the school. The eastern parcel of the church property is located approximately 822 feet from the proposed dispensary site and is therefore ineligible to be approved as a dispensary.

Mr. De Vries stated that the City Council received a letter yesterday from the appellant's attorney, Ms. Gina Austin that has been added to the public record. Ms. Austin claims there are constructed barriers, such as, buildings and fences that impede direct access to the proposed dispensary. Staff's contention is that fences and buildings are not constructed barriers. Measure V references a freeway and flood control channel as examples of a constructed barrier, not buildings and fences which are of less significance.

City staff did measure the distance between the easterly parcel of the Saint John of the Cross facility and the parcel at 8260 Broadway using direct access via only streets; the distance was 947 feet, still under 1,000 feet.

Councilmember Jones disclosed that he met with City staff to discuss this appeal.

Mayor Pro Tem J. Mendoza disclosed that her granddaughter attended Saint John of the Cross School and she volunteered with their lunch program.

The City Council discussed and questioned the term barrier and the definition.

Chance Hawkins, Special Counsel for City staff, regarding barriers he explained the City's municipal code states natural topographical, constructed barriers, such as freeways or flood control channels.

Mayor Vasquez asked for clarification on the word barrier because a freeway is not a natural occurrence and would a building be considered a barrier.

Chance Hawkins stated that staff has traditionally viewed this as the Trolley line and the freeway as barriers.

Mayor Vasquez opened the public hearing.

Gina Austin, representing the applicant, explained that the school isn't located on all of the parcels owned by Saint John of the Cross and is outside of the 1000 feet distance requirement. Using the information initially provided by City Staff, they conducted a survey from 8086 Broadway the far left parcel; the other parcel is where the children eat lunch. Regarding the barrier issue, she noted that you can't follow a path of travel by going over buildings, fencing, houses, and an apartment complex, they impedes travel. Due to the barriers, the distance to the school or the day care center is located is 1360 or 1250 feet.

Chris Williams, applicant, stated that he has been to Saint John of the Cross several times and did not have any problems accessing the auditorium and the Knights of Columbus Hall, which indicated to him, this was not part of the school. He added that he values Lemon Grove and believes that this is an opportunity for the City to move forward.

The following public speakers were opposed to the marijuana dispensary at 8260 Broadway:

Jim Stanley, St. John of the Cross
Greg Krum, Principal, St. John of the Cross
Else Hanning
Jesse Ramirez
David Mendez

The following public speakers were in favor of the marijuana dispensary at 8260 Broadway:

Lavonne Gulpin
Skye Ross
Marco Molina
Kathleen McLean
Cheryl Marrow
Lee Mattar
Rakesh Goyal

Action: Motion by Councilmember Jones, seconded by Councilmember Arambula, to close the public hearing passed, by the following vote:

Ayes: Vasquez, J. Mendoza, Arambula, Jones, M. Mendoza

Mayor Pro Tem J. Mendoza stated that the Saint John of the Cross School, to the west, is a new main school building and previously it was behind the church and the preschool along with the kindergarten was under the Knights of Columbus Hall. After the new school was built, the old building is now used as the cafeteria and is part of the school. She added that Washington Street previously ran through the school and has since been closed to vehicles. She added that the school, daycare center, and church are part of the school. The City's municipal code requires 1000 feet distance and 947 feet is not acceptable.

Mayor Vasquez asked for clarification on the three parcels and what defines a barrier.

David De Vries answered that the school and the day care are on the larger parcel, however, the school and day care use all three parcels. This has always been viewed as one property, not three separate parcels.

James Lough read the definition of premises from the City's municipal code. Regarding the measurement issue, he recommends following what has been done previously, with a circle denoting the measurement, not a direct line. With the typical measurement, it doesn't matter how many buildings are in between, that would be a deviation from previously used measurement methods.

David De Vries explained regarding the measurement of 947 feet, this was taken from the Northeast corner from the easterly parcel, then direct route southeast along Lemon Grove Way, to the corner of Lemon Grove Way and Broadway, then northeast along Broadway to the corner of 8260 Broadway.

Action: Motion by Mayor Pro Tem J. Mendoza, seconded by Councilmember Arambula, to adopt the resolution passed, by the following vote:

Ayes: Vasquez, J. Mendoza, Arambula, Jones, M. Mendoza

Resolution No. 2017 -3533: Resolution of the City Council of the City of Lemon Grove Upholding The Development Services Director's Determination to Deny a Request to Apply For a Conditional Use Permit to Establish a Medical Marijuana Dispensary at 8260 Broadway, Lemon Grove, California

5. Public Appeal to Consider Appeal No. AA1-700-0004 Regarding the Denial of Zoning Clearance No. ZC1-700-0016; a Request to Apply for a Conditional Use Permit to Establish a Medical Marijuana Dispensary at 6915 North Avenue in the General Commercial Zone

Mayor Vasquez stated that the applicant for appeal No. AA1-700-0004 has requested that the public hearing be continued to September 19, 2017.

City Council Oral Comments and Reports on Meetings Attended at the Expense of the City. (GC 53232.3 (d))

Councilmember Jones commented on the special investigation recently conducted at SANDAG and added the Executive Director has resigned.

Councilmember Arambula attended Lemon Grove's Annual Community Potluck.

Councilmember M. Mendoza had no reports this evening.

Mayor Pro Tem J. Mendoza attended League of California Cities and SANDAG meetings. Also, the Soroptimist Margarita party, the retirement celebration for Lemon Grove School District Superintendent, Ernest Anastos, the 75th anniversary celebration for the First Baptist Church, and Lemon Grove's Annual Community Potluck.

Mayor Vasquez attended the 32nd Anniversary of the Women's Convention, Civic Night hosted by Southern California Second Jurisdiction, where she presented a certificate of recognition. She also attended Movies in the Park Lemon, Grove's Annual Community Potluck, the retirement celebration for Lemon Grove School District Superintendent, Ernest Anastos, and participated at the Heal Zone event in Long Beach.

City Manager and Department Director Reports

Lt. Amos reported on the first Lemon Grove Sheriff's Department bike patrol and added that will continue through October.

Closed Session

Conference with Legal Counsel – Anticipated Litigation Significant exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of Section 54956.9:
Two Cases

Closed Session Report: No reportable action was taken.

Adjournment

There being no further business the meeting was adjourned at 8:48 p.m.