

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

January 5, 2016

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

Members present: Mary Sessom, George Gastil, Jerry Jones, Jennifer Mendoza, and Racquel Vasquez.

City Staff present: Lydia Romero, City Manager; Dave DeVries, Interim Development Services Director; Mike James, Public Works Director; James P. Lough, City Attorney; Lt. May, Sheriff's Department; Laureen Ryan Ojeda, Administrative Analyst/Deputy City Clerk; and Rick Sitta, Fire Chief.

Call to Order:

Presentation: Circulate SD, Summary of SRTS 4-year grant activities

Public Comment

John L. Wood commented that City Hall was closed from Christmas through New Year's and there was no sign on the door announcing the closure and no message when he called City Hall. He also commented that Bob Baker Auto had 4 auto-transport trucks unloading from 10:00pm – 11:30pm and that the trucks were parked on Federal Avenue in a continuous turn-lane.

1. Consent Calendar

A. Approval of City Council Minutes

December 5, 2015 Regular Meeting

B. Ratification of Payment Demands

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

D. Local Appointments List Update

E. Appointment of City Councilmembers to Committees, Commissions and Boards

F. Mayor Pro Tem Rotation

G. Continuation of Public Hearing (2A-500-0003) Housing Element Obligations

H. Stormwater Professional Services Agreement with D-MAX Engineering, Inc.

I. Professional Services Agreement with Rick Engineering

Action: Motion by Councilmember Jones, seconded by Councilmember Gastil to approve the Consent Calendar Items A, B, C, D, E, G, H, I, passed by the following vote:

Ayes: Sessom, Gastil, Jones, Mendoza, Vasquez

Resolution No. 2016-3382: Resolution of the City Council of the City of Lemon Grove, California approving an agreement for professional services with D-MAX Engineering, Inc. for stormwater services.

Resolution No. 2016-3383: Resolution of the City Council of the City of Lemon Grove, California approving an agreement with Rick Engineering for planning and professional services in the City of Lemon Grove.

1. F Mayor Pro Tem Rotation

Action: Motion by Councilmember Jones, seconded by Councilmember Mendoza to approve the Consent Calendar Item F, passed by the following vote:

Ayes: Sessom, Gastil, Jones, Mendoza, Vasquez

The Mayor Pro Tem Oath of Office was given to George Gastil.

Resolution No. 2016-3381: Resolution of the City Council of the City of Lemon Grove, California confirming the rotation of Councilmember George Gastil to serve as the Mayor Pro Tem for the period January 5, 2016 through December 20, 2016 and establishing the Mayor Pro Tem rotation schedule for the subsequent two years.

2. Introduction of Chapter 8.64 (PROHIBITION OF MEDICAL MARIJUANA DISPENSARIES, DELIVERIES, AND COMMERCIAL CULTIVATION) to the Lemon Grove Municipal Code

On October 9, 2015, Governor Brown approved the Medical Marijuana Regulation and Safety Act (MMRSA), which goes into effect on January 1, 2016, and establishes a comprehensive state licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical marijuana through Assembly Bills 243 and 266 and Senate Bill 643. According to the provisions of the MMRSA, unless local agencies have a land use ordinance in place by March 1, 2016 that expressly regulates or prohibits the cultivation of marijuana and/or the delivery of medical marijuana within their jurisdictions, these activities will be permitted and regulated by the State under the MMRSA. This Ordinance bans the cultivation, manufacture, transportation, storage, distribution, and sale of medical marijuana.

In November 2012, the Citizens of Lemon Grove voted on two ballot measures, Measures "P" and "Q", to allow medical marijuana operations in Lemon Grove. The voters rejected both.

Previously, the City clarified that the collective sale of medical marijuana is not a permitted use in Lemon Grove. On December 2, 2014, the City added Ordinance No. 425 which added subsection C to Lemon Grove Municipal Code (LGMC) Section 17.12.070. It declares that, based on previous interpretations, marijuana dispensaries or collectives are not allowed in any zone in the City of Lemon Grove. LGMC Section 17.12.060 (Zoning-Compliance with Regulations) expressly provides that uses, which are not specifically permitted, are prohibited. As medical marijuana dispensaries, collectives are not permitted by right or with a conditional use permit; they are prohibited. Further, as marijuana cultivation was not specifically permitted, it was also prohibited.

The MMRSA does not require implementing regulations that would guide the City in determining whether its current legal framework is sufficient to prevent cultivation or delivery of medical marijuana. Since the deadline of March 1, 2016 would potentially cede land use authority to the State by default, staff presents this ordinance for consideration. A brief summary of each proposed section is attached.

The Ordinance adds a new Chapter 8.64 to the Title 8 (Health and Safety). This Title contains many categories of special uses that could potentially create health and safety risks to the community at large without specific regulatory control.

8.64.010 defines specific medical facilities that have state licenses exempt from control by the City. As long as these facilities operate within the state licenses, they are not subject to local control except as allowed by the general laws of the State. The definition section also defines what a “dispensary” is. It defines what is “cultivation” and “delivery” of marijuana for the purposes of regulation.

8.64.020 prohibits a medical marijuana dispensary in all zones within the city’s jurisdictional limits. No permit, whether conditional or otherwise, shall be issued for the establishment of such use. It does not matter whether a dispensary is a primary or accessory use. All potential collective sales of marijuana are banned whether by a non-profit or strictly commercial operation.

8.64.030 violations of this Chapter shall be enforced by means of administrative, civil, and/or criminal remedies. Such remedies are cumulative and not exclusive. Choosing one remedy does not preclude the choice of another remedy under the Lemon Grove Municipal Code.

8.64.040 (Cultivation of Marijuana as a Prohibited Use and/or Activity) bans marijuana cultivation by any person or entity, including clinics, collectives, cooperatives and dispensaries in all zones within the City’s jurisdictional limits. No permit, whether conditional or otherwise, shall be issued for the establishment of such activity. Any Cultivation that takes place in violation of any provision of this Chapter is unlawful, and is hereby declared a public nuisance. Nothing in Chapter 8.64 is intended to, nor shall it be construed to, preclude any landlord from limiting or prohibiting Marijuana Cultivation by its tenants. This provision is necessary because the Compassionate Use Act (Proposition 215), adopted in 1996, allows qualified patients and their primary caregivers to grow their own marijuana. It does not allow growth for sale or exchange to other persons under the plain language of the Initiative. However, it does not make any mention of the ability of a property owner to control a use on their property. This Ordinance does not attempt to interfere if a landlord places restrictions of the rental of her or his property.

8.64.050 prohibits the delivery of marijuana within the City. Mobile delivery services with questionable locations have been proliferating throughout the State. This section bans the delivery of marijuana in Lemon Grove.

Each of these prohibitions is declarative of existing law. Lemon Grove is a typical city with a zoning code that only allows those uses expressly permitted in the code. Delivery and cultivation have never been permitted in Lemon Grove. In 2012, the voters rejected two opportunities to allow dispensaries. In 2014, the City Council adopted an ordinance clarifying that medical marijuana uses are not allowed in any zone. This Ordinance puts those specific prohibitions in place with similar language to other California cities attempting to address the Legislature’s authorization of commercial growing and sale of marijuana that was not permitted by the Compassionate Use Act approved by the voters in 1996.

This Ordinance is categorically exempted from environmental review under CEQA Guideline 15321. It is a class 21 exemption in that it implements regulations of code enforcement measures that are declaratory of existing law in Lemon Grove. As a declarative measure of existing prohibitions, the action has no potential to cause either a direct change in the environment, or a reasonably foreseeable indirect physical change in the environment, and therefore does not require environmental review.

Staff recommends that the City Council introduce Ordinance No. 437 by title and allow the publication of a Summary of the Ordinance in a newspaper of general circulation. Introduction of the Ordinance authorizes staff to file a Notice of CEQA Exemption in the manner allowed by law and to set the matter for adoption on January 19, 2016.

Council members received between 100 and 200 emails that are on file with the City Clerk.

Public Comment: The following people spoke in favor of the Ordinance: Katie Dexter, Bob Spencer, Stephen Brown, Dana Stephens, Sydel Howell, and Gus Lopez. The following people spoke against the Ordinance: LaVaughn Greene, Jennifer Miller, Thomas Giovann, and Darryl Cotton.

Action: Motion by Mayor Sessom, seconded by Councilmember Jones to introduce and conduct first reading for Ordinance 437, passed by the following vote:

Ayes: Sessom, Gastil, Jones, Mendoza, Vasquez

Action: Motion by Mayor Sessom, seconded by Councilmember Jones to authorize the City Attorney to prepare a summary for publication and set the matter for second reading and adoption on January 19th and authorize staff to file a Notice of Exemption under CEQA.

Ayes: Sessom, Gastil, Jones, Mendoza, Vasquez

Ordinance No. 437: An Ordinance of the City Council of the City of Lemon Grove, California, adding Chapter 8.64 (prohibition of medical marijuana dispensaries, deliveries, and commercial cultivation) of the Lemon Grove Municipal Code to prohibit the cultivation of marijuana, the delivery of marijuana, and all associated businesses within the City of Lemon Grove.

Mayor Sessom called a recess at 7:30pm.
The City Council meeting reconvened at 7:40pm.]

3. Ordinance Changes to Title 17 (Zoning) of the Lemon Grove Municipal Code to refocus planning authority from the Planning Commission to the City Council (Ordinance No. 434) and make other clerical changes

On September 15, 2015, the City Council adopted an Ordinance to assign Planning Commission jurisdiction to the City Council, which establishes the City Council as the City's primary Planning Agency. Changes need to be made throughout the Municipal Code to eliminate references to the Planning Commission and make sure that it is clear that the City Council has authority over various planning agency matters. This Agenda Item makes changes to Title 17 (Zoning) to implement Council direction. Some clerical and clarifying changes are made to update the code in other respects.

This Ordinance was first brought to the City Council on October 20, 2015. Council member Mendoza found some typographical errors in the strikeout version that needed to be corrected. The attached Ordinance includes the Council member's helpful suggestions.

The attachments ("C" – "G") to the Ordinance are specific sections that cover adjustments that must be made to ensure there is consistency in the land use approval process. The references to the Planning Commission, if left in the code, will be inconsistent with the legal process put in place under Ordinance Number 431. This Ordinance eliminated the Planning Commission. With Ord. No. 431 in effect, the City Council is now the Planning Agency for the City.

Attachment "C"

Attachment "C" is a redline version of changes to certain the definitions found under Lemon Grove Municipal Code § 17.08.010 (Definitions). While most definitions in this section will remain the same, Attachment "C" adds and clarifies definitions needed to update the code's legal structure and to update the language on other land use issues.

The Ordinance amends the term "advisory body" to reflect the elimination of the Planning Commission. The definition now includes a reference to the "Community Advisory Commission", which, on a discretionary basis, may be called upon by the City Council to play an advisory role on a land use matter. The Council would adopt a resolution to delegate a land use

matter to the Community Advisory Commission seeking an advisory recommendation. The resolution would contain findings to demonstrate the reasoning of the City Council for seeking an advisory recommendation from the Commission.

The Ordinance amends the definition of “condominium” to update it the reference to reflect current state laws. There have been changes in the state codes applicable to local condo regulations and this definition reflects those changes. Attachment “C” also adds a new definition of “condominium project”. This new definition helps differentiate an individual condominium unit from an overall project. Staff will be bringing forward changes to the Subdivision Title to reflect both changes to implement the shift in legal authority to the City Council and to bring the Subdivision Title up to date on condominium issues. The additions of updated condo language in the Subdivision Title will implement changes recommended in the recently adopted Housing Element to the General Plan.

Finally, Attachment “C” corrects the title of the Development Services Director. Throughout the code are references to “planning director”, “community development director” and other variations. These code changes have been correcting these inconsistencies in sections that are being amended. This definition makes clear the both the title and the duties of the Development Services in her land use role under the Zoning Title.

Attachment “D”

Attachment “D” amends Chapters 17.12 (Zoning District Provisions) and 17.16 (Zoning Districts) to reflect the change in legal authority of the City Council and the change in legal title of the Development Services Director. Under LGMC § 17.12.070, the changes reflect that the City Council interprets the appropriateness of a particular use in a zone when there is a question about the application of the code.

The remaining sections in Attachment “D” reflect that the initial interpretation (zoning clearance) of the applicability of the land uses in the Zoning Title is made by the Development Services Director, eliminating references to the “community services director”. All of the changes Chapter 17.16 are to subdivision (B) of the various sections that establish “permitted uses” in each zone within the City. There are no other changes to Chapter 17.16 except retitling the Development Services Director reference in each section.

Attachment “E”

Attachment “E” addresses amendments to Chapter 17.20 (Special Overlay Districts). These areas are where the City Council has adopted special regulations that “overlay” the underlying zoning districts. In Lemon Grove, these are called Special Treatment Areas (STAs).

Attachment “E” amends two sections, 17.20.010 (Special Treatment Overlay Zones) and 17.20.040 (Special Sign Districts). The first one, Overlay Zones, has changes in subsections (B)-(I). There are three types of changes. (1) Changes of Planning Commission to City Council. (2) Changes to the Development Services Department designation. (3) Changes dealing with references to the former redevelopment project areas downtown.

Attachment “E” leaves in references showing that Section 17.20.010 has coterminous boundaries with the downtown redevelopment project area. These references are left in to help define the area’s boundaries. It removes other references to redevelopment regulations because of the dissolution of the Lemon Grove Community Development Agency.

Under Section 17.20.010(H)(2), any subdivision of land in the Special Treatment Area (STA) must be approved by the City Council and there is no appeal from the approval by the Council.

Under Attachment “E”, 17.20.040 amends subsections (C) and (G), to make similar changes to reflect that the redevelopment agency is dissolved and changes related the Development Services Department.

Attachment “F”

Attachment "F" amends the Chapter containing general zoning district regulations. 17.24.010 (Off Street Parking) has changes in subdivision (C) granting authority to the City Council. 17.24.030(B) (Yards and Setbacks) has a grammatical change and a change granting authority to the City Council. 17.24.050(J) (Landscaping and screening) has a change related to the title "Development Services Director." 17.24.060(B) is amended to remove a City Health Department reference and 17.24.060(C) has a grammatical change. Attachment "F" amends 17.24.060(D) to reflect the authority of the City Council. Attachment "F" amends 17.24.080(F) to change references to the Development Services Director. 17.24.081 removes references to the redevelopment agency and makes changes to reference new City Council authority and the Development Services Department. Finally, Attachment "F" makes similar changes to 17.24.090 (Nonconforming uses, structures and lots) to reflect City Council authority and the name change of the Development Services Department.

ATTACHMENT "G"

Attachment "G" amends Chapter 17.28 (Procedure and Administration). This attachment amends 17.28.010 (Administration) to restructure the process to have all appeals of staff determinations go to the City Council. All recommendations made by staff will go from the staff directly to the City Council. Most of the changes to Chapter 17.28 deal with the appeal process for various types of entitlements. Without a Planning Commission, the City Council now hears matters either through appeal from a staff determination or because it has original approval authority. In legislative matters, the City Council always had the final approval. The Planning Commission did not approve legislative items (i.e. zoning changes (17.28.080), specific plans (17.28.090), variances (17.28.060) and general plan amendments (Government Code 65800 et. seq.)), but made recommendations to the City Council. The changes in Chapter 17.28 reflect that change with the Development Services Director making recommendations to the City Council directly on legislative matters.

One type of administrative (quasi-judicial) approval, involved Planned Development Permits. If the PDP involves a major subdivision or a condominium map, final approval authority rested with the City Council. (17.28.030.) Approval authority will remain with the City Council but recommendations will come directly from the Development Services Director.

For other non-legislative approvals (administrative entitlements), the City previously used two methods. In both methods, the Council only heard matters through appeal. (17.28.020.) In one type of procedure, the Planning Commission made the original decision. These included PDPs for minor subdivisions or projects that fit the criteria set out in 17.28.030(B). In addition, conditional use permits (17.28.050) and variances (17.28.060) now will only require staff recommendation and City Council approval.

The City Council and Planning Commission only heard other administrative approvals on appeal. The Development Services Director has approved all temporary use permits (17.28.040), minor use permits (17.28.052), minor modifications (17.28.060) and zoning clearances (17.29.070). Now the appeals of these matters will go directly to the City Council. Attachment "G" brings the administrative procedure sections into line with the reorganization of land use authority.

One other significant change under Attachment "G" deals with hearing notices. Under 17.28.020(F)(2), public notices will be mailed to property owners that live within 500 feet of a project. This is a change from the 300-foot notice for all projects in the past and the change is based on City Council direction.

The City Council retains all authority it had before the reorganization. The City Council assumes all authority previously held by the Planning Commission. The Development Services Director retains all authority she had before the changes. However, the appeal structure now requires that the Development Services Director decisions either be subject to appeal directly to the City Council or be a recommendation to the City Council.

Pursuant to Public Resources Code Section 21065, this action does not constitute a “project” within the meaning of CEQA. The action has no potential to cause either a direct change in the environment, or a reasonably foreseeable indirect physical change in the environment, and therefore does not require environmental review.

Based on previous direction given by the City Council, Staff recommends that the City Council adopt Ordinance No. 434 by title to make conforming amendments to LGMC Chapter 17.28 and allow the publication of a Summary of the Ordinance in a newspaper of general circulation.

Action: Motion by Councilmember Jones, seconded by Mayor Pro Tem Gastil, to conduct second reading by title and adopt Ordinance 434:

Ayes: Sessom, Gastil, Jones, Mendoza
No: Vasquez

Ordinance No. 434: An Ordinance of the City Council of the City of Lemon Grove, California amending Title 17.28 (Zoning) of the Lemon Grove Municipal Code to reassign planning duties to the City Council and make other procedural and clerical changes.

4. Public Hearing to Consider Ordinance No. 436 – Zoning Amendment ZA1-500-0005 (Amendments to the Water Efficient Landscape Ordinance – Chapter 18.44 of the Municipal Code)

On December 1, 2015, the City Council introduced Ordinance No. 436, an ordinance amending the City’s Water Efficient Landscape Ordinance. The State requires all cities to implement water efficient ordinances that are as effective as the State’s updated Model Water Efficient Landscape Ordinance. Amendments include reducing and simplifying design and landscape documentation requirements, ensuring consistency with Helix Water District regulations, and implementing policies and objectives of the General Plan through minimum plant, tree, and edible plant requirements. The project is a City initiated project. Until this Ordinance is adopted, the City must implement the State’s Model Ordinance. If adopted, the Ordinance becomes effective on February 4, 2016.

Action: Motion by Councilmember Jones, seconded by Mayor Pro Tem Gastil, to conduct second reading by title only and adopt Ordinance No. 436:

Ayes: Sessom, Gastil, Jones, Mendoza, Vasquez

Ordinance No. 436 – An Ordinance of the City Council of the City of Lemon Grove, California amending Chapter 18.44 of the Lemon Grove Municipal Code to provide a local water efficient landscape ordinance that is as at least as effective in conserving water as the State’s Model Water Efficient Landscape Ordinance (MWELo).

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

Councilmember Jones had nothing to report.

Councilmember Mendoza attended the following: Lemon Grove Community Bonfire; meeting with Dr. Weber, State Assembly Member; Christmas on the Promenade; Grand Opening of the Carlsbad Desalination Plant; Soroptimist of Lemon Grove Holiday Giving; and, Citronica II Holiday Party.

Mayor Pro Tem Gastil attended the following: meeting with Dr. Weber, State Assembly Member; Lemon Grove Community Bonfire; Christmas on the Promenade; SANDAG’s FACT (Facilitating Access to Coordinated Transportation) 10th Anniversary; and, a Sheriff ride-along.

Councilmember Vasquez attended the following: Christmas on the Promenade; Lemon Grove Community Bonfire; La Maestra gift giveaway; Family Resources Center North Park; Citronica II Holiday Party; American Youth Soccer Volunteer Appreciation Dinner; Local Agency Formation Committee meeting; and, El Nino Preparedness Forum.

Mayor Sessom attended Lemon Grove Community Bonfire and the usual SANDAG and Airport Authority meetings.

City Manager and Department Directors Report

Mike James reported there were about 3,500 people in attendance at the Lemon Grove Community Bonfire and that attendance was consistent throughout the event.

Chief Sitta reported that the City withstood the first major rains and is okay.

Lt. May reported that a benefactor gave out \$25,000 to various Lemon Grove residents just before Christmas.

City Manager Lydia Romero reported that an Interim Finance Director has been hired and the City will be conducting interviews January 11, 2016 for a permanent Finance Director.

City Attorney James P. Lough gave an annual reminder that City Council members legally need only report those meetings they attend at the expense of the City or if they get paid by other organizations to attend, for example SANDAG; he also thanked the two Council members that attended the meeting with State Assembly member Weber; finally, he will be at the next City Council meeting, but will not be at the February 2nd meeting.

Adjournment

There being no further business to come before the City Council, Housing Authority, Sanitation District Board, Lemon Grove Roadway Lighting District Board, and the Lemon Grove Successor Agency the meeting was adjourned at 8:10 p.m.

Laureen Ryan Ojeda

Laureen Ryan Ojeda, Deputy City Clerk