



COUNCIL AGENDA: 6-14-11
ITEM: 2.3(j)

RULES AND OPEN GOVERNMENT COMMITTEE

Meeting Report
March 9, 2011

PRESENT: Mayor Reed, Vice-Mayor Nguyen and Councilmembers Oliverio and Herrera.

ABSENT: Councilmember Constant

STAFF: City Manager Debra Figone, Assistant City Manager Ed Shikada, Assistant City Attorney Ed Moran, City Clerk Dennis Hawkins, Redevelopment Agency Assistant Director Gary Miskimon, Redevelopment Agency Deputy Executive Director Janet Kern, Agenda Services Manager Nadine Nader, Mayor's Council Agenda Manager Sara Wright, and Staff Technician Tamara Davis

A. City Council

1. Review Final Agenda for March 15, 2011

The Committee determined that the San Jose Financing Authority items would be heard first, immediately following the Consent Calendar, and set a "time certain" for Item 3.4 (Election Commission Interviews) to be heard last and not before 3:00 p.m.

Action: The Committee approved the final agenda, as amended with Sunshine Waivers to Items 2.x (Amendment to the Agreement with Macias, Gini & O'Connell LLP to Provide Annual Financial and Compliance Audits) and (Sponsored Travel to Osaka New Energy Forum, Osaka Japan) and Item 3.x (Support of an Overlay Approach for the Creation of a New Area Code within the Current 408 Area Code).

2. Review of Draft Agenda for March 22, 2011

Action: The Committee approved the draft agenda.

B. Redevelopment Agency (RDA)

1. Review Final Agenda for March 15, 2011

Action: The Committee approved the final agenda, as amended with Sunshine Waivers for Items 6.1 (Approval of a property use agreement with the Tabard Theatre Company), 6.1(b) (Adoption of a resolution approving an adjustment to the FY 2010-11 Adopted capital Budget adding \$36,000 to the Competitive Art Capital Fund Project Line in the Merged Redevelopment Area), and 7.1 (Approval an amendment to the Lease with MACLA for 500-510 South first Street).

2. Review Draft Agenda for March 22, 2011

Action: None – the Committee will review and discuss any agenda items at its next meeting.

C. Review of Upcoming Study Session Agenda(s)

None.

D. Legislative Update

1. State

Director of Intergovernmental Relations Betsy Shotwell provided an update on the State budget. She reported that five moderate Republican have generated a letter to the Governor listing their top priorities for budget discussions that include a spending cap and reforms; pension reform; and also to save and reform Redevelopment agencies and enterprise zones. There is also discussion on whether to put tax extenders on the June 7 ballot as well as accepting the \$12 billion plus in cuts from the Joint Conference Committee. The State Senate is scheduled to vote on March 10, 2011.

2. Federal

None.

E. Meeting Schedules

None.

F. The Public Record

Document Filed: Memorandum from City Clerk Dennis Hawkins dated March 4, 2011 transmitting the Public Record for the week of February 25 – March 3, 2011.

Public Comments: David Wall pulled his letter, Item (g), and expressed his discontent with what he feels is censorship.

Action: The Public Record was noted and filed.

G. Boards, Commissions and Committees

None.

H. Rules Committee Reviews, Recommendations and Approvals

1. Workload Assessment for Council Requests and Referrals

2. Accept the Establishment of a Maximum Number (CAP) and Streamlined Application Process for Medical Marijuana Establishments and forward recommendation to the City Council for formal action on March 29, 2011. (See memorandum for complete recommendation)
(Nguyen/Herrera/Liccardo/Constant)

Documents Filed: Memorandum from Vice-Mayor Nguyen and Councilmembers Herrera, Liccardo, and Constant dated March 3, 2011 to the Rules and Open Government recommending the Establishment of a Maximum Number (CAP) and Streamlined Application Process for Medical Marijuana Establishments.

Vice-Mayor Nguyen informed the committee that she and her colleagues put this memo forward with the intent of laying the groundwork for a more thorough and productive discussion at the Council level on March 29. The proliferation of medical marijuana collectives is spinning out of control and seriously draining the City resources. Her office has received numerous constituent calls complaining about odors, congregation of people that do not live in the neighborhood, the illegal zoning of these businesses, and their proximity to schools and community centers. Vice-Mayor Nguyen seeks to establish a meaningful mechanism to regulate medical marijuana establishments.

Councilmember Herrera discussed the fact that most of the current dispensaries are not legal according to the Police department and the District Attorney. Although the City no longer supplies business licenses for these establishments, they continue to expand. She mentioned that the City wants organizations that are following the spirit of the law, and that would be collectives. Councilmember Herrera mentioned that the collectives must be consistent with State law and the City needs a vehicle that meets that. She mentioned that her office is also fielding call from residents who are unhappy with the proliferation of these dispensaries.

Councilmember Liccardo commented that the City needs to get the number of dispensaries down to a manageable level so they can be regulated. Currently, the City is overloaded in terms what can be handled with reduced police and code enforcement resources. Councilmember Liccardo also put for the idea of and application fee, so the City has a means for paying for the process of regulating medical marijuana establishments.

Councilmember Oliverio is in favor of a limited number of medical cannabis facilities. He also supports having them in limited places, regulated, and taxed. He also suggested that the Council look at City's land use regulations to help regulate these facilities. Councilmember Oliverio also proposes developing criteria that will help regulate the facilities and also provide a mechanism for determining which ones will stay open. He also mentioned that the District Attorney and California Attorney General would be issuing advisement on this subject in the coming weeks. Councilmember Oliverio also referenced measure U, which offers regulation, financial audits proving they operate as nonprofits, and requires a 7% gross receipt tax. Nonpayment of the tax is one qualifier for

not remaining open. Additionally, he proposed requiring operators of these establishments to complete background checks, similar to that of card room operators.

Assistant City Attorney Ed Moran reminded the Committee that staff has already developed draft regulations and ordinances and subsequent Council discussion will provide clearer direction for final regulations and ordinances. Furthermore, he reiterated the mayor's previous comment that these businesses are operating illegally.

Director of Planning, Building and Code Enforcement (PBCE), Joseph Horwedel posed additional questions for the Committee to consider during the broader discussion: (1) Do we just verify zoning or do we weigh which zoning districts require a conditional use permit, (2) Will PBCE staff be responsible for winnowing down the current number of dispensaries to 10 or does that come down on the Police permit side?

Public Comment: Paul Stewart proposed a Blue Ribbon Task Force made up of City staff, patients, and operators to go through the regulations and propose recommendations regarding Cannabis Clubs in San Jose.

David Wall credited Councilmember Oliverio for his efforts in this matter. He suggested a \$250,000 application fee to fund the administration cost of operating this program.

Stephan Zyskiwicz, Treasurer for Americans for Safe Access Silicon Valley, questioned how and individual would apply legally to open a Cannabis Club.

Michael Hoveland, Michael Gamino, and Pat Knoop support keeping the cannabis clubs in light industrial locations away from residential properties. Does not believe 10 cannabis clubs is enough to support a City the size of San Jose.

Robert Chance expressed a need for the Council to have a comprehensive regulation in place to have a meaningful discussion on the issue of cannabis clubs.

Keith Freeman expressed his opinion that limiting dispensaries will push cannabis use back onto the streets.

Tina Morrill advocated establish parameters and requirements on cannabis collectives, but does not feel 10 businesses are adequate for San Jose.

Sasha Nemcov mentioned that Sacramento has 30 cannabis clubs and since San Jose is a larger city, the City should consider having more clubs.

Jack Puckett mentioned that the City can't move forward until the State Attorney General comes up with guidelines and expressed that San Jose is the model for the entire Bay Area.

Van Hovey, founder of HPMI, Holistic Pain Management Institute stated that he is a legitimate business owner. He pays the BOE tax and business license tax. Their business volunteers in the community and they are fully compliant with state regulations. They would not be able to pay the \$250,000 lottery fee.

Carol and Douglas Chloupek of Medmar Healing Center, a nonprofit, agree with the memo, but do not feel that a cap will solve the issue. They suggested that the City seek solutions through the use of ordinances.

Lauren Vasquez expressed that a limit of 10 would not serve the needs of a City the size of San Jose and believe 50 facilities is more appropriate. She urged the Council to wait for the directive from Rosen's Office. She also mentioned that Council consider other items for this discussion such as zoning, sensitive use, cap, operating requirements, and moratorium.

Chris Coulter stated that the City could be giving up \$900,000 is tax revenue if they only supported 10 cannabis clubs instead of 100.

Stephen Powell commented that he volunteers at a club which is a 501(a) non-profit, which is the same as the Salvation Army, and that he's concerned with congestion and safety if there are only 10 clubs.

Jade Kline, a cannabis writer and educator, commented on the number of marijuana consumers and producers in the south bay area.

Dave Hodges suggested that the City require the current cannabis collective to register with the Police Department as a way of reduce the current pool of collectives, which could reduce the problem posed by having a cap. It would create a method to limit current clubs and stop potential new ones from opening.

John Hughes, UFCW Local 5, recommended that the Council look at the quality of the dispensaries not the quantity. He expressed that a unionized dispensary will be a quality facility, good employer with a union contract.

Matt Senna expressed that a cap on cannabis clubs would limit their ability to properly educate patients.

Donald Irving, Santa Clara Valley Cannabis Society Incorporated, does not believe that that ten facilities is adequate for the city.

Megan Gutierrez, Jacob Garza, and Daniel Ayala support medical cannabis. They provided personal experiences about their interaction and reasons for using medical cannabis. They believe that eliminating these facilities would be a disservice to patients.

Actions: The Committee approved the memorandum, as amended to include a discussion of land use regulations, a cost-recovery application and selection process to get to the determined number of facilities and forwarded to Council for

discussion on April 12, 2011; and requested that all staff memorandums on land use and regulatory framework be presented at the April 12, 2011 meeting, and a Sunshine waiver for the distribution of memos at least ten days prior to the meeting.

3. Retroactive approval of the Fourth Annual Westfield Oakridge Winter Walk and Resource Fair for Seniors as a City Sponsored Special Event, to Expend City Funds and Authorization to Accept Donations of Materials and Services for the Event. Place the item on the March 15 Council Agenda for action. (City Clerk)

Documents Filed: Memorandum from City Clerk Dennis Hawkins dated March 3, 2011 to the rules and Open Government Committee recommending the approval of the Fourth Annual Westfield Oakridge Winter Walk and Resource Fair for seniors.

Actions: The Committee approved the memorandum and forwarded to the Council for formal action on March 15, 2011.

I. Review of additions to Council Committee Agendas/Workplans

1. Community and Economic Development Committee
 2. Neighborhood Services and Education Committee
 3. Transportation and Environment Committee
 4. Public Safety, Finance and Strategic Support Committee
 5. Rules and Open Government Committee
- None.

J. Open Government

1. Appeals of Public Records Act Requests
- None.

K. Open Forum

Public Comment: David Wall expressed his appreciation for gardening and provided the Committee with carrot seeds to promote gardening.

L. Adjournment

The meeting was adjourned at 3:46 p.m.



Mayor Chuck Reed
Rules and Open Government Committee