



# **CITY COUNCIL TRANSPORTATION & LAND USE SUBCOMMITTEE Approved Meeting Minutes**

**Date/Time:** Tuesday, March 27, 2012, 5:00 pm

**Where:** City Hall Committee Conference Room

**Attendants:** Council Member Gomez (Chair), Council Member Polanski,

*Quorum was established*

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## **1. Call to order**

The meeting was called to order at 5:00 pm.

## **2. Public Forum *Please limit comments to 3 minutes***

*There were no speakers during public forum*

## **3. Approval of Agenda & Minutes\***

Councilmember Polanski stated she is good with the minutes but requests that item 5b Tobacco Prevention Policies Discussion be heard before item 5a Medical Marijuana Facilities Update

Chair Gomez was agreeable to the agenda change.

## **4. Announcements**

*There were no announcements*

## **5. Old Business**

### **A. Medical Marijuana Facilities Update**

*This item was discussed after item 5b Tobacco Prevention Policies Discussion*

Chair Gomez requested an update from City Attorney Mike Ogaz.

Mr. Ogaz referred to an appellate case in the City of Lake Forrest. Lake Forrest has a similar ban in Milpitas which does not allow marijuana dispensaries in their city. He read "we conclude that local governments may not prohibit medical marijuana dispensaries all together with the caveat that the legislature allow only at sites where marijuana is collectively or cooperatively cultivated." According to this case, the state law preempts an ordinance that has a total ban because it allows the dispensaries which are in conjunction with cultivation. He stated you can not have a dispensary where the marijuana is grown somewhere else and is imported, because the transportation of the marijuana from the field to the dispensary is illegal. The only transportation allowed, according to this court, is the small amount for personal use.

Mr. Ogaz stated there are other cases that hold that the ban is okay. Staff is waiting for decisions from the US Supreme Court. He read a court ruling that some dispensaries want to operate independently of cultivation centers. There are policies outside their authorization and this should be left to the people of the legislature. He interpreted that what the City has

in the books right now should be modified, though the courts are still in disagreement, but it may be a troublesome ordinance with the existing ordinance at this time.

Chair Gomez expressed concern both he and Councilmember Polanski have regarding the courts possibly coming back and says you can't ban these all together. He said we've [Subcommittee] always felt that they should study the issue, have a well thought out ordinance that goes further than state law goes, because the state guidelines don't go far enough. He said we have discussed a lot of policy alternatives in the last meeting that goes further than the state. What he's hoping to do, as he committed to Council he would bring this issue back in April, is to discuss the different policy items on how far they should from sensitive receptors, how many [dispensaries], and the tax. He suggested the Subcommittee say we studied the issue, if the state allows them; this is where we believe we should be going [with the ordinance] and have the council have the debate instead of ignoring the issue. He would rather have an ordinance out that is well thought out, that deals with our issues, and is something catered to Milpitas.

Council Member Polanski asked if the courts rule on the state and "x" needs to happen with regulations, as a city, can our regulations be more restrictive?

Mr. Ogaz said we [City] can be more restrictive than state law, if it does not contradict state law. For example, if you wanted to put dispensaries in conjunction with cultivation sites, then you can probably limit them in certain zoning sites. He thinks there can be additional restrictions as long as it is not directly contradictive of state law.

Council Member Polanski asked because we are a general law city, versus a charter city, we go by state law and then we look at what ordinances best fit our local community. A lot of people are talking about local control. She stated it would be best to look at needs of our local city. She referred to Chief Graham as he spoke to us several meetings ago and mentioned earlier in the meeting, the shortage of resources, that it is very important there are tight guidelines, and the courts should uphold them.

Mr. Ogaz said that is certainly what this court says and it opens the door to more creative opportunities. He asked if it's the Subcommittee's desire, we can have the discussion of what may be authorized by state law and ultimately what is acceptable by the Supreme Court just so it's clear that we are in areas which are unchartered. This would facilitate a more complete discussion.

Council Member Polanski stated that she did do some research and she had staff bring copies of articles that were available at the meeting. She referred to State Assembly Member Nora Campos introducing AB 2465, which talks about medical marijuana identification cards. This was just introduced February 24, 2012. She also had some other information staff printed, which are just for interest as the City moves forward on this issue and takes it to the City Council.

Mr. Ogaz asked at the direction of the subcommittee, how to move forward with this item.

Chair Gomez and Council Member Polanski decided to meet one more time to review the report to make sure they are comfortable with it. Looking at the second meeting in April, Chair Gomez deferred to staff. Councilmember Polanski reviewed the calendar for reports (ARS) to provide the information in a timely matter. She stated if looking at the second [Council] meeting, that means April 17<sup>th</sup> and asked when does the information have to be put through.

City Manager Tom Williams stated we would need the information by April 9<sup>th</sup> for the meeting on the 17<sup>th</sup>. This doesn't give enough time at all, per Chair Gomez.

Chair Gomez asked if May 1st be a problem (for City Council)? Council Member Polanski said this would allow for more time to do the comparison and reporting. She asked if staff will have the information available to meet Monday the 16<sup>th</sup>? Or during the day of the 18<sup>th</sup>? Chair Gomez said that would be okay. She requested 2pm on the 18<sup>th</sup>. Chair Gomez stated he can make that work. She asked if that works for Staff. Mr. Williams deferred to Mr. Ogaz regarding the timeline.

Mr. Ogaz asked for greater specification as to what report. Chair Gomez said the state regulations and guidelines such as sensitive receptors. Chair Gomez wanted staff to track those down and compare where Milpitas is with the guidelines. Council Member Polanski remembered that what we've seen before (in previous meetings) of what we charge for tax and fees, and what state rules can and can not be done as far as state law. She thanked Mr. Ogaz for the research and he stated you're quite welcome.

Chair Gomez opened the item up to the public for comment

Zachary Pilalas from the Other Side of the Fence Cannabis Collective brought a couple things to discuss. He said he studied so many articles for so many years. He stated that part of what the state said that you can not outright ban [them] is something to look at. Because right now, he stated, you are dealing with a law that was established so many years ago, and the City should have known by 1997 what to do, so it's way to late for that. He said you (City) should of known by 1997, and highlighted when they were actually putting a bill of for recreational [marijuana] use, it didn't pass because the people who put the bill up discovered some writing they didn't like in their own bill and they themselves put the bill down so it wouldn't pass. The next time it comes up, Mr. Pilalis shared, he feels will pass. He said just like you can't regulate where Peet's Coffee and Tea should locate, you won't be able to regulate where to put a recreational [marijuana] business as well. Part of it, he stated, is hiding it from kids and sensitive areas rather than educating them is probably why California is 47 out of 50 in education. He added, in regards to the case the state has already decided what they wanted to do. He said, they want to allow it, but not outright ban them, but you will have a choice. He said the state has said in a public press conference either the cities can tax and regulate these businesses and benefit from them, or the state will be allowed to tax and regulate, and the state will take the tax dollars and Milpitas will miss out. He talked to Mountain View & Sunnyvale about this. The best thing is to accept the fact that is recognized by medicine. The DEA, two and a half months ago, released a report that it does have medicinal purposes and they are moving forward not backward. The best thing to do is to establish their place in the industry. Thank you.

Stephen Zyszkiewicz, the Other Side of the Fence Cannabis Collective, has been looking for a place to go [for his medical marijuana business]. He said they were looking at San Jose, but that never happened. They keep going to city to city and nothing is happening. He said it is a good thing the City is going ahead with it and asked what we [city] are waiting for. He stated there are actual patients, not just those with insomnia and headaches using this as a safer medicine, but there are people with harsher diseases like multiple sclerosis and fibromyalgia. What they are doing right now might not be recognized by law enforcement if they deliver in Milpitas. He said they just want to be a small business, a few small businesses, with a few jobs. He quoted Harborside [medical marijuana facility] "out of the darkness into the light". There are people growing it and selling it [marijuana]. They just want to be a small business and part of the community. He concluded that the City of Lake Forrest case, might ask the Supreme Court to depublish the case to only the affected parties of the case, so you never know what happens.

Rob Means 1421 Yellowstone, stated there are a number of things going on. He said let's get out of the curb, because clearly the wave is coming. He quoted President Barack Obama "never has it been more important to have a national drug control strategy guided by sound principals of public safety and public health", meaning even he [Obama] is on board for medical marijuana at a national level. Mr. Means said this state is more progressive than that. He said of 70% of people asked if they think marijuana should be regulated and taxed like wine, they will answer yes. He said the populace is there, the governmental structure just hasn't caught up. He would take a conservative approach and isolate these places [for dispensaries] while we get more familiar with what's going on, meanwhile training our officers, so people are in the game, and things operate smoothly. He said so when one does open up, say in the civic center, we are more prepared for that move because of having this experience. He said they [Subcommittee] are on the right track and to keep going.

Linda Windisch, Lacey Drive. She said that Mr. Ogaz is starting to make good points. There are court cases that are contradictions. She said there are so much contradictions on what is decided, that to step into that now, she feels, would be a mistake. She says we have seen in other cities throughout California where they stepped into this, and realized they made a mistake, and they look at shutting down businesses. She feels that is unfair to allow a business, and then shut them down. She says to make sure we do it right in the first place with so much controversy and disagreement in the law, just between localities and the state, I think it would be a mistake to step into this. She said she read articles that state law contradicts federal law. Federal law states that medical marijuana is illegal. Having a business that sells medical marijuana is against the law. She said she read cases that the Federal DEA is going after the property owner, shutting down the businesses and taking the property from the land owner. She doesn't want Milpitas to be in that situation where Milpitas is shutting down businesses and having their property seized. These are solid reasons that we should not be stepping into this until the legal issues are solved. Bottom line, Ms. Windisch stated, she would rather not have at all, but if we are forced to have it in Milpitas, we should only do this if and when we are forced to do this.

Council Member Polanski thanked those that spoke. She stated we are moving into this and ensuring this is done correctly. She said this, as Council Member Gomez stated, that we want to look at all the options, court cases, and be ready in case something happened. She doesn't think we are advocating to change our current ordinance, at this time, but we need to have some strong steps in place, and that are regulations meet our needs if these other things take place.

Chair Gomez added he always thought of this as a "moving" document/policy paper that says based on what we know now, here's how to protect the schools, neighborhood, businesses. This could be coming, so we better be prepared.

Council Member Polanski said we have been studying this since September and we have been gathering as much information as possible and she appreciates staff for their work and the public that has come to the meetings.

## **B. Tobacco Prevention Policies Discussion**

*This item was discussed prior to item 5a Medical Marijuana Facilities Update.*

Chair Armando Gomez reviewed that the last meeting the Subcommittee decided there were two elements to discuss: 1) smoking in parks and 2) registration program. He believes they would start with smoking in parks then deal with the registration program at a later time.

Sergeant Kevin Corvin stated Police focused on a smoke free ordinance in parks. He stated there were definitions from the old ordinance that were change. The old ordinance stated no

smoking within 25 feet of tot lots. This new ordinance will have new definitions which includes sports facility including parks. Under 2-15.125, which discusses the prohibition of smoking in unenclosed areas means that all parks and facilities own and operated by the City can prohibit smoking. Sergeant Corvin provided the Subcommittee with a binder of the ordinance information.

Council Member Polanski confirmed these regulations are all over the Bay Area. She directed her question to the Chief of Police Dennis Graham and Sergeant Corvin, asking if there would be impacts on enforcing this ordinance. Chief Graham didn't believe there would be a problem, granted, it would be another area to enforce, with limited resources, though he feels Police can do it. He believes citizens would report this and Police can take action. As time goes on, stated Chief Graham, most people will read signage and the smoking at parks would cease.

Councilmember Gomez opened this item to public form.

Veenu King from the Milpitas Youth Advisory Commission & advocate for tobacco prevention for youth. From the clean ups she has done, they found 1,793 cigarette butts at Dixon Landing Park in one hour. She thinks the Subcommittee should consider and support the policy.

Francis Capili, Coyote Street. He said he is a resident with a 2-month old son and wants [the Subcommittee] to invest in the youth and support the ordinance. He also stated for outdoor restaurant dining, he was at El Toritos and cigar smoke ruined his outdoor dining experience. He urged the Subcommittee to reconsider the outdoor dining ordinance. In regards to licensing, he sees students from the High School hanging around Foothill Plaza. They may be 18, or not, but they leave a lot of cigarette butts in the parking lot. In closing, he mentioned his grandfather who died of lung cancer and emphysema. He was a smoker, and now Francis has asthma. He asked for [the Subcommittee] to consider the future of Milpitas.

Sara Wright, Breathe California, stated how she works with youth throughout the country to implement policies for smoke free parks, outdoor smoking ordinances, and it is feasible to implement them [ordinances]. She thinks it is possible and worth doing.

Rob Means, 1421 Yellowstone Avenue, stated he is here on behalf of a level playing field. He stated over 400,000 deaths due to cigarette smoke, with alcohol 50,000 a year. He stated people shouldn't smoke in the park, let them smoke at home like "pot" [marijuana] smokers.

Sergeant Corvin stated in the draft ordinance, there is a reference to dining area, including streets, sidewalk and picnic areas.

Chair Gomez asked for clarification in terms of enforcement.

Chair Gomez stated he is okay with this ordinance. Councilmember Polanski stated she is definitely willing to move this item to the full council.

City Manager Tom Williams clarified this meeting would actually be the 2<sup>nd</sup> meeting in April, April 17.

### **C. Sports Park**

City Manager Tom Williams reminded the Subcommittee that the City purchased about 11 acres of land off of McCandless Drive in the Transit Area. It's the culmination of the last redevelopment efforts before [RDA] was dissolved, with association with 3 property owners. Mr. Williams went out with his authority, with a bid under \$20,000, and chose a landscape architect who specializes in sports parks to see how it [the land] would lay out. He gave landmark references of great mall, McCandless, Integral project, the creek, and other areas, to familiarize the Subcommittee of the area.

Mr. Williams shared 3 different iterations of soccer complexes ranging from a U8 to a U10 field that would include picnic areas, tot lots, and shade structures. These would attract large soccer tournaments, which are all day events. What the architect tries to do is provide an all-day type of a site design and layout.

The other thing Mr. Williams brought to the Subcommittee's attention is that he contacted the school district knowing they have the desire to locate an elementary school in this area. The school district superintendent Cary Matsuoka, hired their own architect to work with our consultant to see how a school could possibly fit and have a joint use while still maintaining a competitive soccer complex as well as a school. He said he is waiting to see how it [a school] fits. He believes more land would have to be acquired and there is a potential for land to be acquired to the east and north. Unfortunately, he stated the City does not have any means to purchase the land he just described because of the dissolution of redevelopment, but we will talk to the school district about if it doesn't fit.

Mr. Williams restated that he hired a consultant that works throughout the country on this type of soccer complex. He said the designs are a work in progress and they are working with the school district to see how it takes place. He said they [staff] are working with the school district to see how it takes shape. He added if the elementary school isn't going to fit here, or we can't facilitate a land acquisition with the school district, he thinks a soccer complex, as a desire from the community, can fit there.

Council Member Polanski asked when it will go by the PRCRC [Parks Recreation and Cultural Resources Commission]. Mr. Williams said if they would like staff to bring it to the commission, as a briefing, and work in progress, they can. Council Member Polanski asked when they will have something to review. Mr. Williams said by end of April; they are waiting to hear from the school district's architect to provide something to staff. Council Member Polanski said if we could have it, before we move too far, she really wants the PRCRC to see it. Mr. Williams said okay and they can brief the PRCRC at their next meeting. Council Member Polanski said the May meeting would be important because the Commission members are looking forward to it and they definitely want to see something.

Mr. Williams said this is just a concept and something that would provide some economic benefit to the City. These tournaments start Friday evening end Sunday evening. The soccer complex will bring people to restaurants and hotels. Mr. Williams said it lays out nicely, with U8 to 2 regulation soccer fields. During the week, there are tot lots that the surrounding community could enjoy. Mr. Williams noted that all the parking, and its' different iterations, he stated Concept A was the preferred design as the linear parking is parallel to the complex. He referred to Concept B as allowing one more field with a snack area, tot lots, but the parking is to the south, which is a little less convenient. Concept C, Mr. Williams stated, is how a school would be envisioned, but without the feedback from the school district. He stated the space where the snack bar is located, is where a school can fit, and there would be still space for the soccer complex for smaller tournament, such as for regional competition. The other concepts allow for national tournaments. Mr. Williams wanted to share with this Subcommittee as an information item, and get feedback. Mr. Williams said he would take it, as a work in progress, as concepts to the PRCRC for

brainstorming. Council Member Polanski said it is a big topic at that commission meeting. She thinks these are good concept to work towards.

Mr. Williams also added that as other sports are growing, such as lacrosse, these concepts would also fit these needs as well. He also stated things are moving in the transit area.

## **6. Other Business**

*There was no other business*

## **7. Adjourn**

*The meeting adjourned at 5:45pm.*