

**MINUTES OF THE ADJOURNED REGULAR MEETING OF THE COSTA MESA
CITY COUNCIL**

December 16, 2014

CALL TO ORDER

The meeting was called to order by the Mayor at 2:08 p.m. in the Council Chambers at Costa Mesa City Hall, 77 Fair Drive, Costa Mesa, California.

PLEDGE OF ALLEGIANCE (00:00:01) – Led by Council Member Foley

ROLL CALL (00:00:22)

Council Members Present: Mayor Mensinger, Mayor Pro Tem Righeimer (arrived 2:20 p.m.), Council Member Foley, Council Member Genis and Council Member Monahan (arrived 2:45 p.m.).

Council Members Absent: None

Officials Present: Chief Executive Officer Thomas R. Hatch, Assistant Chief Executive Officer Rick Francis, Assistant Chief Executive Officer/Administrative Services Director Tamara Letourneau, Economic and Development Services Director Gary Armstrong, Public Services Director Ernesto Muñoz, and City Clerk Brenda Green.

PUBLIC COMMENTS (00:01:50)

Flo Martin, Costa Mesa, requested a permanent fence at the vernal pools at Fairview Park (00:01:52)

Jim Fitzpatrick, Costa Mesa, spoke on Police Union issues. (00:03:45)

Beth Refakes, Costa Mesa, encouraged attendance at the Snoopy House and civility at meetings. (00:07:08)

Jeff Arthur, Costa Mesa, spoke on the school pension contribution rates, teacher's retirement and unfunded pension liability. (00:08:15)

**COUNCIL MEMBER'S REPORTS, COMMENTS, AND SUGGESTIONS (00:12:16) -
NONE**

REPORT- CHIEF EXECUTIVE OFFICER (CEO) (00:12:50)

CEO Hatch discussed the Senior Center closure; and invited the public to attend the Jack Hammet services.

CONSENT CALENDAR – None

PUBLIC HEARINGS – None

OLD BUSINESS - None

NEW BUSINESS (00:14:06)

Staff report provided by Rick Francis and Deputy City Attorney, Chris Neumeyer, including reports from City Departments. (00:14:45)

Discussion regarding State versus Federal law enforcement and possible criminal liability of employees, and quality control provisions. (00:25:15)

Report continued by Deputy City Attorney, Chris Neumeyer. (00:27:20)

Discussion regarding proposals that would allow Council to amend. (00:31:20)

Discussion regarding incorporating the provision of the Excessive Use Ordinance in the Medical Marijuana Ordinance. (00:43:20)

Discussion regarding the type of inspections the Fire and Planning Department would conduct. (00:43:59)

Discussion regarding the City proposed Ordinance and a Conditional Use Permit requirement and process; permits issued by the CEO and an optional Office of Quality Control to establish testing standards. (00:44:34)

Discussion regarding testing procedures and standards, pesticides, THC levels, and State guidelines. (00:45:23)

Discussion regarding inconsistencies in the text of the two initiatives. (00:49:07)

Discussion regarding a general tax versus a special tax and what is included in the two initiatives; the auditing process, and reaching out to the School Districts for input. (00:50:38)

Discussion regarding the City drafted Ordinance and a minor Conditional Use Permit requirement; restrictions and compliance. (00:55:07)

Discussion regarding verification of a co-op; record keeping; and joining a collective. (00:58:13)

Discussion regarding locations for dispensaries and regulations. (01:00:38)

Discussion regarding banking requirements and large amounts of cash on site; regulating the deposit process; crime prevention; and compliance. (01:06:20)

Discussion regarding an entity operating and selling marijuana outside of the perimeters of the law in the City of Costa Mesa, criminal penalties; and penalties for operating without a permit. (01:09:46)

Public Comments:

Flo Martin, Costa Mesa, supports access to Medical Marijuana and supports Option 2. (01:16:45)

Harold Weitzberg, Costa Mesa, spoke in support of creating a stakeholders study group for a City proposed Ordinance; and options for citizens to obtain medical marijuana in a safe environment. (01:17:16)

Paul Lucas, Costa Mesa, spoke on access and restrictions for children; enforcement and the Orange County Health Department; and restriction of locations. (01:20:34)

Virginia Vargas, Costa Mesa, spoke in opposition to adopting the medical marijuana dispensary initiatives as it provides children easier access to drugs. (01:23:46)

Ann Parker, Costa Mesa, spoke on children easily obtaining marijuana; and recommended examining the issue further. (01:25:45)

Randall Longwith, attorney who wrote the 1st initiative; spoke regarding the 1% sales tax; no clause or provision allowing Council to change; on the initiative writers; and opinion that the provision in Proposition 218 does not apply to a citizen petition. (01:28:11)

Gay Royer, Costa Mesa, spoke in support of medical marijuana dispensaries. (01:31:42)

Gary Parkin, Costa Mesa, expressed concern on easily obtaining medical marijuana; recommended restricting to only Industrial areas and to include specific restrictions. (01:34:28)

Sue Lester, Costa Mesa, spoke in support of the initiatives to be on the November 2016 General Election ballot; recommended drafting a City Ordinance with more safeguards; and spoke regarding zoning. (01:35:55)

Michael Alexander, Costa Mesa, supports legalizing medical marijuana in the City and taxing. (01:39:01)

Jay Humphrey, Costa Mesa, stated that the City Drafted Ordinance is a good start but needs further refining; and more time needed to develop the process. (01:41:35)

Lance Rogers, Attorney Newport Beach, has represented licensed dispensaries; City has opportunity to govern the locations of medical marijuana shops; and willing to assist with questions. (01:45:50)

David Kinkade, Costa Mesa, supports the use of cannabis for medical purposes, concerned with proposed initiatives and controls; discussed restrictions of selling in certain areas; and recommended talking to neighboring cities. (01:47:42)

Robert Taft, Costa Mesa, stated he was the main proponent of the first initiative; and discussed the closing of shops in Santa Ana and the relocation of those shops to Costa Mesa. (01:49:50)

Bruce Lamb, Costa Mesa, expressed opposition to the proposed marijuana clinics in Costa Mesa; stated that distribution of marijuana is an entry level drug that leads to substance abuse; and recommend the City reject any proposals for clinics and sales in the community. (01:51:05)

Wendy Leece, Costa Mesa, spoke on safe access; the State of New York passing a Compassionate Care Act; and the wrong message that children are receiving. (01:53:42)

Travis Azevelo, Costa Mesa, stated that children will find access to drugs whether shops are opened in the City or not; and supports adding to the ballot. (01:56:53)

Mayor Pro Tem Righeimer spoke regarding prescriptions versus recommendations; that the State should be addressing the issue; stated not in favor of allowing medical marijuana dispensaries in Costa Mesa; the two initiatives have tax issues and therefore needs to be on the November 2016 ballot; spoke on no enforcement; and supports a stakeholders group. (01:59:05)

MOVED/SECOND: Mayor Pro Tem Righeimer/Council Member Genis (02:05:03)

MOTION: Agendize the two initiatives for June 2016 City Council meeting to order them to be placed on the November 2016 ballot; the City consider creating an ordinance and the Mayor to appoint a task force of all the stakeholders.

Council Member Foley spoke about obtaining marijuana easily and that it is a gateway drug; that the City needs to be ahead of the issue to have controls in place; spoke on the need to address the medical marijuana issue in order to limit impacts to the community; spoke on medical marijuana ancillary effects; and spoke on the Department of Justice guidelines. (02:07:00)

SUBSTITUTE MOTION/SECOND: Council Member Foley/Council Member Monahan (02:10:56)

SUBSTITUTE MOTION: Adopt Ordinance/Option 3 (will refer to as "City Ordinance") with the following changes:

1. Include attachment 36, (map that shows a total of 17 at the top), which is a 1,000 ft. restriction as to: public and private schools, parks, libraries, child care centers, R1, R2, and R3, zones, and only allow in Industrial and Manufacturing zones.
2. Include an Operator permit requirement.
3. Include a minimum age limit of 21.

4. Allow City Council to amend and repeal .
5. Limit to Industrial and Manufacturing Zones only.
6. No felons with felony records in the last 10 years are allowed to be employees or operators.
7. Conditional Use Permit be required.
8. No deliveries be allowed for the first two years.
9. An annual review and report be conducted on compliance and impacts of crime and a report from private and public school districts.
10. Adopt the Ordinance, and approve a March 14, 2015 Special Election to add on the ballot a Special Business Tax of 10% of all gross receipts and earmark the monies in the following order:
 1. Reimbursement for the Special Election cost.
 2. Enforcement of inspection and compliance of Ordinance requirements.
 3. Unfunded Pension liabilities, and after that, any Pension contributions.
 4. Drug Abuse Prevention Education.
 5. Homelessness Prevention and Housing.
11. Staff return in 200 days with a process and procedure for how the City would implement the program.

Council Member Foley spoke on the urgency to address the issue; spoke on enforcement and limiting access; and the 21 age limit for access to the medical marijuana. (02:16:44)

City Attorney Duarte clarified Council Member Foley's motion to adopt Option 3 with changes and that it would need to come back for Council consideration for a 1st and 2nd reading; and in addition Council would need to take action on the two initiatives. (02:18:52)

Discussion ensued on the map, attachment 36, which would allow for 17 locations, and whether to include Commercial zones. (02:22:35)

Council Member Monahan stated that as part of his seconding Council Member Foley's Substitute Motion, he would like commercial zones included with the 1,000 sq. ft. restriction (per the map Attachment 36); age limit of 21; no felonies; and requested a Minor Conditional Use Permit, and to move #4 and #5 ahead of #3 pertaining to the priority of the tax monies, and to bring back the Ordinance with the changes for further discussion and debate. (02:27:10)

Council Member Foley stated that she will not agree to adding the commercial zone. (02:31:03)

Council Member Genis stated she is not prepared to vote on the motion and requested two additions, i.e. no medical personnel on-site; and dispensaries not allowed to do referrals to physicians. (02:31:12)

City Attorney Duarte stated that the urgency on the matter is that the initiatives qualify for a special election. However, if the two initiatives are not placed on a special election ballot then staff would have more time to draft a City Ordinance. (02:32:27)

Council Member Genis inquired on making a substitute motion to bring the two initiatives back in June of 2016 because of the taxation issue and then have a separate motion for a City Ordinance. (02:33:22)

Council Member Monahan stated that today's vote is to bring back the item in order to debate and include all the changes at that time. (02:34:18)

Mayor Pro Tem Righeimer spoke on the 2/3 voter requirement to approve a special tax. (02:37:15)

Discussion ensued regarding more public comments. City Attorney Duarte stated that the public hearing was closed and a vote is needed to allow additional public comments. (02:38:46)

MOVED/SECOND: Council Member Monahan/Council Member Foley

The motion carried by the following roll call vote:

Ayes: Council Member Foley, Council Member Genis, and Council Member Monahan

Nays: Mayor Pro Tem Righeimer and Mayor Mensinger

Absent: None

Motions carried: 3-2

ACTION:

City Council approved allowing additional time for the Public Hearing.

Public Comments

Robert Taft, Costa Mesa, stated that regulating marijuana shops is the only way to have control and that they should be located 1,000 sq. ft. from any residence or school. (02:40:41)

Randall Longwith, attorney who drafted the 1st initiative, stated that he is willing to withdraw 1st initiative and is in favor of working with the City on an Ordinance to ensure all the legal ramifications are addressed. (02:41:53)

Deputy City Attorney Chris Neumeyer stated that the petitions have been certified and cannot be withdrawn. (02:43:02)

Discussion ensued on support for a City sponsored initiative and Los Angeles Measure D.

Mayor Pro Tem Righeimer asked how many dispensaries Measure D allowed. (02:44:39)

Randall Longwith responded that Measure D allowed 135 dispensaries of which 88 are licensed. He noted that previously there were 1,000 dispensaries but currently there are now 700 dispensaries. Santa Ana addressed the problem by having an enforcement plan in place. (02:44:48)

Council Member Genis spoke on adding an enforcement plan to the Ordinance; no onsite physician referral; include an excessive use provision; add reasonable distance from sensitive uses; delete the quality control section; add no recommending a physician; and supports a study session on the issue. (02:45:08)

Council Member Foley stated she does not support adding a City Measure on the November 2016 Election. She added that the City will have more control if done the way she recommended in her motion and can earmark the money; stated she does not agree with creating a task force, but would need to complete a compliance and regulation program. (02:47:06)

Council Member Genis spoke on adding the two initiatives to the ballot in 2016, and the Council can still address a City Ordinance separately.

CEO Hatch spoke to bringing back the issue to a study session in early 2015. (02:51:52)

Deputy City Attorney Chris Neumeyer asked Council to consider the legal analysis for the two citizen measures in regards to Special Election versus General Election. (02:52:49)

Council Member Foley restated the substitute motion and the changes to the draft ordinance as follows: (02:56:37)

1. Include attachment 36, (map that shows a total of 17 at the top), which is a 1,000 ft. restriction as to: public and private schools, parks, libraries, child care centers, R1, R2, and R3, zones, and only allow in Industrial and Manufacturing zones.
2. Include an Operator permit requirement.
3. Include a minimum age limit of 21.
4. Allow City Council to amend and repeal.
5. No felons with felony records in the last 10 years are allowed to be employees or operators.
6. Conditional Use Permit be required.
7. No deliveries be allowed for the first two years.
8. An annual review and report be conducted on compliance and impacts of crime and a report from private and public school districts.
9. In early 2015 bring back the Ordinance for consideration and also to consider a Special Election to add on the ballot a Special Business Tax of 10% of all gross receipts and earmark the monies in the following order:
 1. Reimbursement for the Special Election cost.
 2. Enforcement of inspection and compliance of Ordinance requirements.
 3. Unfunded Pension liabilities, and after that, any Pension contributions.
 4. Drug Abuse Prevention Education.
 5. Homelessness Prevention and Housing.
10. Staff return in 200 days with a process and procedure program for how the City would implement the program.

Council Member Monahan stated he has seconded the motion and it is to bring back the issue to a study session in early 2015. (02:56:15)

Council Member Foley stated the draft Ordinance will also include Council Member Genis suggestions.

Mayor Pro Tem Righeimer spoke regarding a Special Tax; stated he will vote against the motion; and recommends creating a special task force. (02:59:10)

Discussion ensued clarifying that Council would not be voting on the 1st reading, it is to bring back for consideration the draft City ordinance, and the special tax. (02:57:18)

The Substitute Motion carried by the following vote:

Ayes: Council Member Foley, Council Member Genis, Council Member Monahan

Nays: Mayor Pro Tem Righeimer, Mayor Mensinger

Absent: None

Motion carried 3-2

MOTION: Council Member Monahan motioned to agendize the two initiatives for June 2016. (03:00:47)

The motion died for lack of a 2nd.

MOVED/SECOND: Council Member Genis/Council Member Monahan

The motion carried by the following roll call vote:

Ayes: Council Member Foley, Council Member Genis, Council Member Monahan and Mayor Mensinger

Nays: Mayor Pro Tem Righeimer

Absent: None

Motions carried: 4-1

ACTION:

City Council approved to agendize for a June 2016 City Council meeting to order the two initiatives to be placed on the November 2016 ballot.

Deputy City Attorney Chris Neumeyer clarified that in regards to the City Ordinance, Option 3, staff will revise and bring back for Council consideration. (03:02:58)

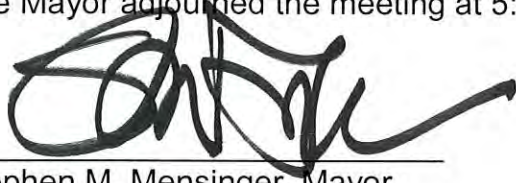
City Attorney Tom Duarte clarified no special election was approved. (03:03:21)

CONTINUED PUBLIC COMMENTS - NONE

COUNCIL MEMBER COMMENTS ON CONTINUED PUBLIC COMMENTS - NONE


REPORT – CITY ATTORNEY – NONE

The Mayor adjourned the meeting at 5:10 p.m.

A handwritten signature in black ink, appearing to read 'S. Mensinger', written over a horizontal line.

Stephen M. Mensinger, Mayor

ATTEST:

A handwritten signature in blue ink, reading 'Brenda Green', written over a horizontal line.

Brenda Green, City Clerk