

REGULAR MEETING OF THE
CONCORD CITY COUNCIL
CITY COUNCIL CHAMBER
1950 PARKSIDE DRIVE
CONCORD, CALIFORNIA
TUESDAY, JUNE 27, 2017

The Concord City Council met in a regular meeting in the Council Chamber located at 1950 Parkside Drive at 6:00 p.m. on Tuesday, June 27, 2017, with Mayor Hoffmeister presiding. The pledge of allegiance was led by Councilmember McGallian. Minutes follow in abbreviated form per Resolution 3361 and Council Minutes of September 26, 1966.

ROLL CALL

COUNCILMEMBERS PRESENT: Edi Birsan, Ron Leone, Tim McGallian, Carlyn Obringer, Laura Hoffmeister

STAFF PRESENT: Valerie Barone, City Manager; Susanne Brown, City Attorney; Kathleen Tropa, Assistant City Manager; Joelle Fockler, City Clerk; Victoria Walker, Director of Community and Economic Development; Karan Reid, Director of Finance; Justin Ezell, Director of Public Works; Guy Bjerke, Director of Community Reuse Planning; Jeff Lewis, Director of Information Technology; Margaret Kotzebue, Senior Assistant City Attorney; Michael Cass, Principal Planner; Robert Ovadia, City Engineer; Mario Camorongan, Senior Civil Engineer, Bernard Enrile, Associate Engineer, Ali Hatefi, Associate Civil Engineer; Mark Migliore, Associate Civil Engineer; David Boatwright, Senior Administrative Analyst; Avis Connolly, Program Manager; Marla Parada, Program Manager; Christopher Rhoades, Budget Analyst; Pedro Garcia, Economic Development Specialist; Kevin Marstall, Senior Civil Engineer; Jessica Gonzales, Assistant Planner; Leslye Asera, Community Relations Manager

MEMBERS OF THE PUBLIC WHO ADDRESSED THE COUNCIL: Bruce Feld, Clayton; Jonathan Cook, Concord; Maritza Cardenas, Concord; George Fulmore, Concord; Tim Carr, Concord; Sheila Hill, Concord; Vic Pinto, Concord; Devlin Sewell, Concord; John Habenkorn, Concord; Rita Steele, Concord; Daphne Burman, Concord; Joe Manns, Concord; Timothy Byars, Concord; Robin Kuslits, Concord; Ginger Edwards, Concord; David Rossi, Crockett; Mike McDermott, Concord; Julie Hicks, Concord; Tess Schoenberg, Lafayette; Javier Gonzales, Concord; Dr. Harmesh Kumar, Concord; Thelma Barry, Concord; Barbara Chase, Concord; Jeff Koertzen, Concord; Sal Villannova, Walnut Creek; Mark Roval, Concord; Joe Partansky, Concord

PUBLIC COMMENT PERIOD

Bruce Feld, Clayton, spoke in support of keeping and using the rail line as a rail bus for tourists on the Concord Naval Weapons Station Reuse Project.

Jonathan Cook, Concord, encouraged the Council to adopt a resolution affirming the City of Concord as a safe city.

Maritza Cardenas, Concord, inquired when the play structure at Meadow Homes Park would be completed.

George Fulmore, Concord, spoke of PG&E workers replacing gas lines on Oakbrook Court, and the timing of the installation and completion of the play structure at Meadow Homes Park.

Tim Carr, Concord, spoke of the lack of speed limit signs in the Sun Terrace neighborhood.

Sheila Hill, Concord, Contra Costa Climate Leaders, requested that the City of Concord adopt a resolution in support of the Paris Agreement.

PRESENTATIONS – none.

ANNOUNCEMENTS – none.

APPROVAL OF MINUTES – May 2, 2017

A motion was made by Birsan and seconded by Leone to approve the minutes from the meeting of May 2, 2017. Motion passed by unanimous vote of the Council.

APPOINTMENT TO THE CONTRA COSTA COUNTY LIBRARY COMMISSION – Tommy Smith

A motion was made by Birsan and seconded by Leone to confirm the appointment of Tommy Smith as the City of Concord's representative to the Contra Costa County Library Commission. Motion passed by unanimous vote of the Council.

APPOINTMENT TO THE CONTRA COSTA COUNTY IRON HORSE TRAIL COMMITTEE – Dan Mackay

A motion was made by Birsan and seconded by Leone to recommend Dan Mackay as the City of Concord's representative to serve on the Contra Costa County Iron Horse Corridor Advisory Committee to District IV Supervisor Karen Mitchoff. Motion passed by unanimous vote of the Council.

ACCEPTANCE OF IMPROVEMENTS – Pavement Rehabilitation Project – Salvio Street Complete Streets and Oak Grove Road, Project Nos. 2331 and 2355

A motion was made by Birsan and seconded by Leone to accept improvements for Pavement Rehabilitation Project – Salvio Street Complete Streets and Oak Grove Road, Project Nos. 2331 and 2355, accept and appropriate CalRecycle grant funding into the project budget; and direct the City Clerk to file a Notice of Completion. Motion passed by unanimous vote of the Council.

ACCEPTANCE OF IMPROVEMENTS – Measure Q Pavement Repair Project No. 4 – Citywide Pothole and Base Repairs, Project 2364

A motion was made by Birsan and seconded by Leone to accept improvements for Measure Q Pavement Repair Project No. 4 – Citywide Pothole and Base Repairs, Project No. 2364; and direct the City Clerk to file a Notice of Completion. Motion passed by unanimous vote of the Council.

APPROVAL OF GREEN INFRASTRUCTURE FRAMEWORK

A motion was made by Birsan and seconded by Leone to approve Green Infrastructure Framework to comply with Municipal Regional Permit (MRP 2.0). Motion passed by unanimous vote of the Council.

APPROVAL OF VARIOUS ANNUAL LICENSE AND MAINTENANCE AGREEMENTS FOR IT HARDWARE AND SOFTWARE FOR FISCAL YEAR 2017-2018

A motion was made by Birsan and seconded by Leone to approve annual license and maintenance agreements for IT hardware and software for Fiscal Year 2017-18 with Accela Government Software in the amount of \$96,761.05, Infor (name change from Lawson) in the amount of \$121,172.23, Cisco/Quest in the amount of \$69,993.13, EBRCSA – JPA in the amount of \$188,280; Contra Costa County for the ACCJIN (Criminal Justice System) in the amount of \$11,428, Contra Costa County for ARIES (Sheriff's Office Info Exchange) in the amount of \$35,070; Contra Costa County for CLETS (maintenance) in the amount of \$1,800; Contra Costa County for CLETS (level II software access) in the amount of \$9,021.62, TriTech for Computer Aided Dispatch (CAD) in the amount of \$120,620.23, and TriTech for Police Records Management System in the amount of \$120,104.60, for a total amount of \$774,251. Motion passed by unanimous vote of the Council.

ACCEPTANCE OF IMPROVEMENTS – Ellis Lake Park Restroom Building, Project No. 2351

A motion was made by Birsan and seconded by Leone to accept improvements under two contracts for Ellis Lake Park Restroom Building, Project No. 2351; and direct the City Clerk to file a Notice of Completion. Motion passed by unanimous vote of the Council.

PROFESSIONAL SERVICES AGREEMENT – Management Partners

A motion was made by Birsan and seconded by Leone to approve a professional services agreement in an amount not to exceed \$108,000 (\$89,900 base contract with \$18,100 contingency) with Management Partners to develop a range of budget strategies that address the long-term funding of City services and capital projects. Motion passed by unanimous vote of the Council.

PROJECT CHANGES TO THE WILLOW PASS PARK RESTROOM AND CONCESSION FACILITY REPLACEMENT – FIELD 1, PROJECT NO. 2334

A motion was made by Birsan and seconded by Leone to approve Construction Change Order No. 1 in the amount of \$41,310 to the Building Procurement Agreement; award a construction contract in the amount of \$68,781 to Hi-Voltage Splicing Company of Danville; authorize the City Manager to execute the change order and contract; authorize staff to utilize the available project contingency for contract change orders up to 10 percent of the available project contingency for contract change orders up to 10 percent of the contract amount; and authorize budget transfers of \$75,700 from the Fleet Replacement Fund (Fund 633) to Willow Pass Park Restroom and Concession Facility Replacement – Field 1, Project No. 2334, and \$44,771 to the Parks System Immediate Needs Project, Project No. 2372. Motion passed by unanimous vote of the Council.

BUDGET TRANSFER – Traffic Signal and Related Improvements at Various Locations project, Project Nos. 2284 and 2293

A motion was made by Birsan and seconded by Leone to approve a budget transfer in the amount of \$90,000 in Measure J Funds (Fund 475) from the Pavement Management Annual Program – Holding Account for the Traffic Signal and Related Improvements at Various Locations project, Project Nos. 2285 and 2293, Federal – Aid Project No. HSIPCML-5135(043). Motion passed by unanimous vote of the Council.

REPRESENTATION TO THE TRANSPORTATION AND COOPERATION REGIONAL COMMITTEE (TRANSPAC)

A motion was made by Birsan and seconded by Leone to approve a change in representation on the Transportation and Cooperation Regional Committee (TRANSPAC) and

affirm the Mayor's recommendation to place Councilmember Obringer as the voting member and Councilmember Leone as the alternate. Motion passed by unanimous vote of the Council.

AWARD OF PURCHASE – Smart Irrigation Controllers and Related Equipment

This item was pulled from the Consent Calendar by Mike Valentine, Imperial Sprinklers.

A motion was made by Obringer and seconded by Birsan to continue this item to the July 11, 2017, City Council meeting. Motion passed by unanimous vote of the Council.

APPROVAL OF LEASE AGREEMENT – First 5 Contra Costa Children and Families Commission

This item was pulled from the Consent Calendar by Concord resident George Fulmore.

A motion was made by Birsan and seconded by Leone to approve a lease agreement with First 5 Contra Costa Children and Families Commission for the use of the Monument Community First 5 Center. Motion passed by unanimous vote of the Council.

APPROVAL OF THE CITY OF CONCORD BIENNIAL OPERATING BUDGET FOR FISCAL YEARS 2017-18 AND 2018-19; TEN-YEAR FINANCIAL FORECASTS; AND RELATED ITEMS

A notice of Public Hearing announcing the hearing dates of June 13 and 27, 2017, was published in the East Bay Times on May 30 and June 13, 2017, mailed to interested parties of record, and posted in the City's posting cabinet.

Director of Finance Karan Reid gave a presentation on the adoption of the City of Concord Biennial Operating Budget for Fiscal Years 2017-18 and 2018-19; 10-year financial forecasts; and the public hearing on an increase in Residential Solid Waste Disposal Fees. She reported that State law requires that the City of Concord adopt a budget prior to the beginning of each fiscal year, a Budget Workshop was held on May 9, 2017, a public hearing was held on June 13, 2017; and continued to June 27, 2017, for final action by the City Council.

Ms. Reid explained the residential solid waste disposal fee increase of 3.04 percent, reporting that the City's residential solid waste franchise agreement base year adjustments are generally performed every six years, and interim rate adjustments are made to smooth rate adjustments to customers. She clarified that adjustments are based on Refuse Rate Index, and the proposed fee increase is 3.04 percent, about \$1 - \$1.50/month per customer.

Ms. Reid requested Council adopt Resolution No. 16-6042.4 amending residential solid waste collection fees, Resolution No. 17-52 establishing the appropriation limit, Resolution No. 17-53 setting the minimum threshold over which City Council approval is required, and Resolution No. 17-54 adopting the Municipal Operating Budget and Ten-Year Financial Forecasts for FY 2017-18 and FY 2018-19. She noted that Local Reuse Authority Resolution No. 17-18 approving an interfund loan agreement between the City of Concord and the Local Reuse Authority was being removed from consideration and will be put on the July 11, 2017, agenda for consideration.

Following questions by the City Council, Mayor Hoffmeister opened a public comment period.

Mike McDermott, Concord, spoke of his agreement with the budget item to increase the code enforcement officers from four to five.

George Fulmore, Concord, spoke of not seeing improvements to Ellis Lake Park in the budget.

Mayor Hoffmeister closed the public comment period.

A motion was made by Birsan and seconded by McGallian to adopt Resolution No. 17-6042.4 entitled, "A Resolution Amending Exhibit A to Resolution No. 78-6042 Establishing Fees

and Charges for Various Municipal Services in the City of Concord to Increase Residential Solid Waste Fees," adopt Resolution No. 17-52 entitled, "A Resolution Establishing the Appropriation Limit for the City of Concord for Fiscal Year 2017-18 Pursuant to California Constitution Article XIII B," adopt Resolution No. 17-53 entitled, "A Resolution Establishing the Minimum Threshold Over Which City Council Approval is Required in Accordance with Concord Municipal Code Title III, Sec. 3.10.040(a) for Fiscal Year 2017-18." Motion passed by unanimous vote of the Council.

INTRODUCTION OF ORDINANCE NO. 17-10 – Delivery of Medical Marijuana or Cannabis from Licensed Dispensaries to Qualified Patients

A notice of Public Hearing announcing the hearing date of June 27, 2017, was published in the East Bay Times on June 14, 2017, mailed to interested parties of record, and posted in the City's posting cabinet.

Principal Planner Michael Cass presented a report on potential marijuana regulations, specifically requesting direction on whether or not the City wishes to allow the delivery of medical cannabis, to get direction from Council in regard to other marijuana regulations Council wishes to pursue, and to get direction on public outreach efforts.

Mr. Cass explained that an interdepartmental working group on marijuana regulations was formed made up of representatives from the City Attorney, City Management, Police, Finance, Public Works, Planning, and Economic Development Departments. He then presented a history of marijuana regulations, an overview on pending State bills, and clarified the Proposition 64 Election Results, noting that approximately 61 percent of voters in Concord voted for the Proposition.

Principal Planner Cass summarized the Control, Regulate, and Tax Adult Use of Marijuana Act (AUMA) as follows:

AUMA legalizes marijuana for persons 21 years and older to:

- Smoke or ingest marijuana (products);
- Possess, process, transport, purchase, obtain, or give away 28.5 grams of marijuana or 8 grams of concentrated marijuana; and
- Cultivate up to 6 living marijuana plants per dwelling unit for personal use.

The types of marijuana uses allowed under AUMA include:

- Personal cultivation;
- Commercial cultivation;
- Distribution/delivery;
- Transportation;
- Manufacturing;
- Testing laboratories;
- Dispensaries; and
- Micro permit (small-scale dispensary and cultivation)

Mr. Cass noted that although State law allows the use of marijuana, under Federal law, possession of marijuana is not allowed, and US Attorney General Sessions indicated that the Controlled Substances Act will be strictly enforced. He outlined the existing Concord regulations including the prohibition of medical marijuana dispensaries, prohibition of outdoor cultivation of medical marijuana but allowance of indoor medical marijuana cultivation, and prohibition of outdoor cultivation of non-medical marijuana.

Principal Planner Cass reported that in May, 2017, the Council Committee on Policy Development and Internal Operations (PD&IO) met regarding marijuana. At that time the speakers at the meeting were largely in favor of permitting deliveries and dispensaries, and the Committee gave the following directives to staff:

- Clarify testing laboratory regulations;

- Provide more information on potential medical marijuana dispensary regulations;
- Research pros/cons of indoor cultivation;
- Research staff-recommended temporary ban; and
- Develop regulations for Council consideration to remove ban on deliveries of medical marijuana.

Mr. Cass explained that the Police Department produced a memorandum after the May, 2017, PD&IO Meeting regarding its concerns with robberies of cash and product, and recommended waiting for State legislation to be finalized; and recommended safety standards if the delivery of medical marijuana is approved. Those recommended safety standards have been incorporated into Ordinance No. 17-10 and include:

- Deliveries performed only by licensed dispensaries to qualified patients;
- Those performing deliveries registered with Police Department with names, ages, and driver's license numbers; and
- Thefts must be promptly reported.

Mr. Cass reported that staff was recommending a temporary ban except for all allowed uses due to timing, permissive zoning, and pending legislation. He stated that the Council has three long-term regulatory options to consider – general prohibition/ban; regulation of commercial activities; and regulation of personal cultivation.

Economic Development Specialist Pedro Garcia explained taxation and economic development, reporting that effective January 2, 2018, all medical and non-medical marijuana retail sales are subject to a 15 percent State excise tax on all marijuana products, a \$9.25 cost per dry-weight ounce of marijuana flowers, and a \$2.75 cost per dry-weight ounce of marijuana leaves. He noted that the City has the ability to impose an additional tax measure, and the earliest time to adopt a measure would be on the November 2018 ballot. He clarified that State sales tax is implemented with the sale of marijuana.

Mr. Garcia stated that the economic impact AUMA may have on the City is unclear; however, there is a potential for new developments, property value increases for the allowed commercial zones, employment, and a new potential tax revenue source.

Mr. Cass identified other issues that staff brought forward for initial discussion including crime, life safety, odor, and sustainability/environmental issues. He requested feedback from the Council in regard to community outreach options including a community survey, a professional (statistically valid) survey, and community workshops.

Mr. Cass recommended that the Council introduce Ordinance No. 17-10 allowing delivery of medical marijuana to qualified patients by licensed dispensaries, direct staff to develop a temporary ban on marijuana uses, except for uses required by AUMA and by Council; direct staff on community engagement, and provide direction to staff on which, if any, marijuana uses the Council wishes to pursue.

Following clarifying questions by the Council, Mayor Hoffmeister called a recess at 7:30 p.m. The meeting resumed at 7:40 p.m.

Mayor Hoffmeister opened a public comment period.

Vic Pinto, Concord, spoke in opposition to growing marijuana both outdoors and indoors.

Devlin Sewell, Concord, spoke of the difficulty obtaining medical marijuana in Concord.

John Habenkorn, Concord, spoke of the importance of medical marijuana and home delivery.

Rita Steele, Concord, spoke about how medical marijuana has helped her.

Daphne Burman, Concord, spoke of the benefits of medical marijuana.

Joe Manns, Concord, spoke about how medical marijuana has helped him and the importance of home delivery.

Timothy Byars, Concord, spoke of the responsibility of the City Council to represent its constituents and allow marijuana sales in Concord.

Robin Kuslits, Concord, Lambda Democratic Club of Contra Costa County, spoke in support of medical marijuana in Concord.

Ginger Edwards, Concord, Support for Recovery, spoke in support of medical marijuana in Concord; however, requested that if delivery of medical marijuana is allowed, taxes or fees be implemented to support recovery efforts.

David Rossi, Crockett, spoke in support of medical marijuana dispensary and delivery.

Mike McDermott, Concord, spoke in support of staff's recommendations, and spoke in opposition to dispensaries and delivery services in Concord.

Julie Hicks, Concord, spoke in support of medical and recreational marijuana and retail locations in Concord.

Tess Schoenberg, Lafayette, spoke of the benefits of cannabis.

Javiar Gonzales, Concord, spoke about how medical marijuana has helped him and the importance of delivery services.

Dr. Harmesh Kumar, Concord, spoke of the importance of common sense laws allowing people to use medical marijuana for pain management.

Thelma Barry, Concord, spoke in support of mobile deliveries of medical marijuana.

Barbara Chase, Concord, spoke in support of medical marijuana deliveries.

Jeff Koertzen, Concord, spoke of the misconception of marijuana being a gateway drug.

Sal Villanova, Walnut Creek, operates a delivery dispensary and spoke of his willingness to work with the City to understand how a delivery service operates.

Mark Rovai, Concord, operates Five Star Greenery delivery dispensary and spoke of the difficulty in getting medical marijuana to the general population.

Joe Partansky, Concord, spoke of the drafting of an ordinance for marijuana use.

Mayor Hoffmesiter closed the public comment period.

Motion by Birsan and seconded by Hoffmeister to introduce Ordinance No. 17-10 entitled, "An Ordinance Amending Chapter 5.80 (Marijuana) of the Concord Municipal Code to Allow the Delivery of Medical Marijuana by Licensed Dispensaries to Qualified Patients" by reading of the title only and waiving further reading. Motion passed by unanimous vote of the Council.

Motion by Hoffmeister and seconded by Obringer to uphold the ban and directed staff to research and bring back information on manufacturing, lab testing regulations, commercial cultivation, dispensaries, an informal and a statistically valid survey of the community, taxes, opening pilot medical marijuana dispensaries, community workshops, "green" indoor grows, and outdoor grows. Motion passed by the following vote of the Council:

AYES: Leone, McGallian, Obringer, Hoffmeister NOES: Birsan ABSENT: None

CORRESPONDENCE

- a. Proclamation – Father Richard Mangini Retirement, June 17, 2017
- b. Proclamation – Marine Barracks/Marine Corps Security Force Company NWS, June 24, 2017
- c. June 14, 2017, letter to California State Assemblymember Timothy S. Grayson in opposition of SB 649 (Hueso) Wireless Telecommunications Facilities
- d. Email from Kenji Yamata re: US Conference of Mayors' Climate Protection Agreement
- e. Email from Silvia Amico re: crime on Meadow Lane
- f. Budget Hearing PowerPoint Presentation
- g. Marijuana Regulations PowerPoint Presentation
- h. Correspondence Received on Agenda Item No. 6.b – Marijuana Regulations

CLOSED SESSION REPORTS – none.

COUNCIL AND STAFF REPORTS

Councilmembers shared information on events and activities in which they had participated since the last meeting and commented on items of interest.

By order of the Mayor, the meeting was adjourned at 9:30 p.m.


LAURA M. HOFFMEISTER
MAYOR


JOELLE FOCKLER, MMC
CITY CLERK