

**MINUTES  
CITY COUNCIL REGULAR MEETING  
MAY 23, 2017**

**CALL TO ORDER**

The regular meeting of the City Council of the City of Highland was called to order at 6:00 p.m. by Mayor Lilburn at the Donahue Council Chambers, 27215 Base Line, Highland, California.

The invocation was given by Tim Evans, The Unforgettables Foundation, and the Pledge of Allegiance was led by Mayor Pro Tem McCallon.

**ROLL CALL**

Present: Chavez, Lilburn, McCallon, Timmer  
Absent: Solano

**REPORT FROM CLOSED SESSION**

No meeting.

**SPECIAL PRESENTATIONS**

None

**PUBLIC COMMENT**

None

**CITY COUNCIL CONSENT CALENDAR**

**A MOTION** was made by Councilman Timmer, seconded by Mayor Pro Tem McCallon, to approve the consent calendar as submitted. Motion carried on a roll call vote, 4-0, with Councilwoman Solano being absent.

1. Waive the Reading of All Ordinances  
Waived the reading of all Ordinances in their entirety and read by title only.
2. Minutes – May 9, 2017 City Council Regular Meeting  
Approved the Minutes as submitted.
3. Warrant Register  
Approved Warrant Register No. 646 for May 23, 2017, in the amount of \$614,628.23 and Payroll of \$77,760.24.

4. Notice of Completion – Bid No. 2015-02, “Pedestrian Access Improvements, Sidewalk Gap Closure and Miscellaneous Sidewalk Repairs” (Project Nos. swk12001 & swk13001)
  1. Accepted Project Nos. swk12001 and swk13001, “Pedestrian Access Improvements, Sidewalk Gap Closure and Miscellaneous Sidewalk Repairs” (Bid No. 2015-02) as complete;
  2. Authorized the Mayor to sign the Notice of Completion; and
  3. Directed the City Clerk to file the Notice of Completion.
  
5. Grant of Easement – Community Trail Easement from Kiel Family
  1. Accepted the Grant of Easement for Community Trail from the Kiel Family; and
  2. Directed the City Clerk to record the Grant of Easement.
  
6. Consolidated Landscape and Lighting District 96-1 Annual Report (Fiscal Year 2017/18)
  1. Adopted Resolution No. 2017-015 giving preliminary approval of the Annual Report; and
  2. Adopted Resolution No. 2017- 016 setting June 27, 2017, as the date of the protest hearing.

RESOLUTION NO. 2017-015

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HIGHLAND, CALIFORNIA, GIVING PRELIMINARY APPROVAL OF ENGINEER’S REPORT FOR CONSOLIDATED LANDSCAPING & LIGHTING DISTRICT NO. 96-1 FISCAL YEAR 2017-18

RESOLUTION NO. 2017-016

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HIGHLAND, CALIFORNIA, DECLARING ITS INTENTION TO LEVY AND COLLECT ASSESSMENTS FOR FISCAL 2017-18 IN CONSOLIDATED LANDSCAPE AND LIGHTING DISTRICT NO. 96-1, AN ASSESSMENT DISTRICT, AND OFFERING A TIME AND PLACE FOR HEARING OBJECTIONS THERETO

7. Street and Drainage Maintenance District 96-1 Annual Report (Fiscal Year 2017/18)
1. Adopted Resolution No. 2017-017 giving preliminary approval of the Annual Report; and
  2. Adopted Resolution No. 2017-018 setting June 27, 2017, as the date of the protest hearing.

RESOLUTION NO. 2017-017  
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HIGHLAND,  
CALIFORNIA, GIVING PRELIMINARY APPROVAL OF REPORT FOR  
STREET AND DRAINAGE MAINTENANCE DISTRICT NO. 96-1  
FISCAL YEAR 2017-18

RESOLUTION NO. 2017-018  
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HIGHLAND,  
CALIFORNIA, DECLARING ITS INTENTION TO LEVY AND  
COLLECT ASSESSMENTS FOR FISCAL 2017-18 IN STREET AND  
DRAINAGE MAINTENANCE DISTRICT NO. 96-1, AN ASSESSMENT  
DISTRICT, AND OFFERING A TIME AND PLACE FOR HEARING  
OBJECTIONS THERETO

#### **CITY COUNCIL PUBLIC HEARING**

8. Resolution No. 2017-019 Fixing the Highland Paramedic Special Tax Rate for Fiscal Year 2017-18

Mayor Lilburn opened the public hearing.

City Manager Hughes stated this is our annual public hearing for the setting of the paramedic special tax. The tax is at the same rate that it has been since it was adopted back in 1985. It generates approximately \$356,000 per year which generates approximately 20% of the costs of providing the paramedic services. Staff is recommending that the Council approve the resolution.

Mayor Lilburn called for any speakers in favor or in opposition of this item. Seeing none, the public hearing is now closed.

**A MOTION** was made by Mayor Pro Tem McCallon, seconded by Councilman Chavez, to adopt Resolution No. 2017-019 fixing the Highland Paramedic Special Tax rate for Fiscal Year 2017-18. Motion carried, 4-0, with Councilwoman Solano being absent.

RESOLUTION NO. 2017-019  
A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF HIGHLAND, CALIFORNIA,  
FIXING THE HIGHLAND PARAMEDIC SPECIAL TAX  
RATE FOR FISCAL YEAR 2017-18

9. Municipal Code Amendment (MCA-17-002) – Consideration of an Ordinance Prohibiting Commercial Marijuana Activity and Adopting Reasonable Regulations Regarding Indoor Marijuana Cultivation on Private Residences, Consistent with State Law

Mayor Lilburn opened the public hearing.

City Attorney Steele stated we have had a study session on this issue previously as well as a hearing before the Planning Commission so I won't take too much time in the staff report, but just to remind the Council where we are in response to Prop 64. Adopted at the last election, the State of California now legalizes the recreational use of marijuana and commercial sales of marijuana for people over 21. The initiative allows cities to adopt regulations or ban on commercial sales of marijuana. Those regulations need to be in effect prior to January of 2018 when the State is going to start licensing commercial marijuana businesses. So if we are going to regulate or ban those businesses, staff is recommending those ordinances be in place and fully effective prior to January of 2018. At the study session with the Council, you directed staff to prepare an ordinance that would ban commercial marijuana businesses, the same as the city already bans medical marijuana businesses, medical marijuana dispensaries, mobile dispensaries and cultivation. So we would make the commercial side of things consistent with what the city already does on medical marijuana and dispensary services, and without a ban as of January 2018, the State could license commercial marijuana sales here in the city without any city regulatory control. We already know that medical marijuana dispensaries as well as commercial marijuana businesses have the potential to be a problem in the city. We have had a number of dispensaries over the past couple of years having to be shut down because medical uses are already banned. We've had inquiries to staff about commercial businesses in the city and we know in a number of neighboring communities commercial businesses are already looking to locate. The other problem that is raised by the adoption of the initiative is the issue of cultivation of marijuana. Without city regulation, people would be permitted to grow marijuana plants both indoors and outdoors. At the state level, the state initiative says we cannot control indoor growing of marijuana up to six plants by a person over 21 years of age or older for personal use. We can prohibit outdoor cultivation and we can put reasonable controls over indoor cultivation. Law enforcement, code enforcement and planning staff will tell you that outdoor cultivation of marijuana is a particularly problematic use. For one thing the plants are very valuable and so it can encourage theft and potential crime impacts. For another, marijuana plants today get to be pretty large and they are smelly and they are flammable, obviously, so they cause a lot of potential obnoxious uses that are not consistent with basic residential life in a built-out community. And so, staff recommended and the Council directed staff to prepare a ban on outdoor cultivation of marijuana. So the ordinance before you would prohibit all commercial marijuana activities in the city, would not attempt to regulate or ban personal use of marijuana which is allowed for recreational purposes and for medical purposes as well. We don't attempt to regulate that. We'll just ban commercial businesses

in the city and would prohibit outdoor cultivation, and with regard to indoor cultivation of marijuana the ordinance before you obviously allows indoor cultivation of up to six plants for personal use by a person 21 years or older, but puts the following conditions: the indoor cultivation has to be fully enclosed either in the main structure or a fully enclosed auxiliary structure. Again, up to six plants only, have to be in a secured room, a room that can be locked and secured in a way that is not accessible to people under 21 years of age. If it's in a rental it has to be with the written consent of the owner. The indoor cultivation cannot use any kind of chemical, aerosol or other extraction techniques. In some cases, in the larger growing operations, indoor cultivation they have a technique where they withdraw the oil from the cannabis plants and that requires butane or other flammable aerosols. We are going to prohibit that in this ordinance. The plants cannot be visible from the right-of-way. There has to be fire protection such as a fire extinguisher on site and permits are required for any kind of plumbing work or any kind of electrical work that would be taken to facilitate the growing. The people growing the plants cannot use a required parking space as the location for growing. So if you have a required garage at a residence, for example, you can't use the garage space to grow marijuana plants when that's required to be available for parking. Fundamentally, the structure used for indoor cultivation has to remain in its main use. So if plants are being grown in a residence, the residence can't be sort of turned over into just a growing facility. It still has to have a kitchen, bedroom facilities; growing up to six plants really has to be just an ancillary use for personal purposes. So with that, the ordinance you have before you takes into account all the things that the Council directed staff to put into the ordinance. The Planning Commission has considered the ordinance and has recommended approval and your staff report has some comments and staff's response to those comments that came up at the Planning Commission. We would therefore recommend the Council introduce and read by title only, waive further reading of this ordinance.

Mr. Fred Yauger stated I testified in front of the Planning Commission when this issue came up. The draft minutes will reflect my comments. I totally support this ordinance. While we need businesses in this city, this is not the kind of business that I had envisioned as the future of the community. I was concerned initially. I had this thought in my mind about mini farms in backyards with six marijuana plants growing unregulated. I see that's been taken care of by putting it in a confined area, so I see nothing not to like about this ordinance.

Ms. Gilda Gularte stated I am a 20 year resident of Highland. This body cannot circumvent the will of the people. I'm here to remind you whether you like it or not, whether you support it or not, is irrelevant. The fact is this Council does not have the authority or the legal standing to override the voters of Highland. It is irresponsible to put the City at risk of litigation that will have no chance of winning. Please consider tabling this item and looking for ways to address this issue in ways that positively impacts the City and work to find ways to leverage the potential gains and revenue. Consider a commission to review, analyze and implement responsible ordinances that can benefit the City and its residents and

can provide revenue to expand or put programs in place to better the lives of Highland residents. Programs to look at: recreational centers, expanding the Senior Center, youth sports programs, city infrastructure, scholarships for students and public safety. We can and should learn from our neighbors in Adelanto that have embraced the cannabis industry to put millions in their city coffers, allowing them to increase their police force and have seen a reduction in crime.

Mr. Lanny Swerdlow stated he is a registered nurse, certified legal nurse consultant and Director of Marijuana Anti-prohibition Project, an Inland Empire based medical marijuana patient support group and law reform organization. In regards to your proposed ordinance to ban licensing and regulating stores to distribute legal marijuana, I don't see the rationale for prohibiting it except maybe having legal marijuana sends the wrong message to children. Although I think you would be equally concerned about having stores selling alcohol and tobacco is also sending the wrong message to children, especially considering 50,000 people a year die from alcohol, 400,000 people a year die from tobacco and nobody dies from marijuana. If you don't license and regulate stores to provide marijuana to your residents you will still have just as much marijuana in Highland as if you didn't, but what you won't have is the millions of dollars in tax revenue from the residents of Highland and surrounding areas who will go to those cities that have regulated stores and permitted licensed locations where they will be purchasing marijuana there and the taxes they get will be used to provide services to their community but not to your community. However, some residents here in Highland will not want to make the drive all the way to the cities that do regulate its sale and wants to continue to obtain marijuana the old fashioned way; they'll buy it from criminals who don't pay any taxes. So you are essentially allowing crime to continue when you have the opportunity to reduce crime and increase revenue at the same time. I do not believe your staff has done a thorough job in exploring and providing you with a comprehensive analysis of what legalization means and has cherry picked only the negative and has not provided you with the many positives that have been found in states that have legalized marijuana and cities that have allowed its licensing and regulation. In 2008, I approached the City of Palm Springs to allow medical marijuana dispensaries under their zoning ordinances. They agreed to look into it and formed a medical marijuana task force which I served on during the year and a half process in which they drafted an ordinance which took effect in 2009 making them the first, and until 2015, the only city in the Inland Empire to allow commercial medical marijuana distribution. They originally allowed only three dispensaries, but because there was no problems caused by these dispensaries and they brought in millions of tax dollars to the city, they now allow six to operate. I would suggest you do the same path and form a citizens' committee just like Palm Springs did to look into allowing marijuana businesses to be regulated and licensed here in the City of Highland. Why would you want to make it difficult for your residents to obtain a legal product here in the State of California? A law, by the way, the majority of the citizens of Highland voted in favor of.

Mayor Lilburn called for any other speakers in favor or in opposition of this item. Seeing none, the public hearing is now closed.

Councilman Chavez inquired as to when the study session was held when the item of marijuana was discussed.

City Manager Hughes responded it was actually at a Council meeting on November 22, 2016, right after the state law was passed.

Councilman Chavez stated I think we are looking at this the wrong way with the marijuana. We can get a lot of money out of this if we start taxing it. The projected tax revenue of sales are already projected to be \$1 billion each year, and according to the Denver polls the retail sales of marijuana were up to \$122 million in the month of July 2016. In 2015 they had over \$135 million raised in taxes. I was looking at the way our districts voted and actually wrote down, did the research, because it was pretty easy to look up to see what our people who voted for us, who voted for this. So in my district, I had four different precincts and the total yeses we got on Prop 64 were 1,102 which is an average of 61.5% voted yes on Prop 64. I actually went and looked up the other districts as well and in Councilwoman Solano's district, she had a 54% average of people voting for it; in district three which is Mayor Lilburn's district, had 54% average and in the other three districts almost a 48% and then 50% which is an average for the City of 54%. So 54% of the city voted in favor of Prop 64, and I don't see why we're going to deny them the right to have this marijuana inside their homes or outside their homes. A lot of the community of color which have been unfairly targeted by law enforcement that has used marijuana, specifically in district one where we don't have, I don't know how to put it here, it's really important for us to side with the community. The way the report was shown is showing a bunch of negativity. There's nothing positive about the marijuana that has been done throughout the State of California. If we tax this, 60% of the remaining revenue is going to go to youth education, drug prevention treatment and job placement, 20% is going to environmental and the other 20% is going to go to law enforcement training to recognize drug drivers who are under the influence of cannabis. I think it's very important we look into this, and I know Councilwoman Solano, who had a medical emergency today and is not able to attend, and I hope we can actually, if it's possible, move this item to another agenda so all Council Members are present to vote on it and speak, since it's a very important issue.

Councilman Timmer inquired if we go ahead and adopt this, when does this go into effect?

City Attorney Steele responded 30 days following second reading.

Mayor Lilburn asked so we still have another Council meeting in which there would be a second reading so the fifth Council Member has an opportunity?

Attorney Steele stated that is correct.

Mayor Lilburn called for any other additional questions. At this time we do need to address it. I appreciate the staff and the time that they put into it. On looking into the ordinance there is so much we have concern with about the enforcement, the regulation and I think they did a good job with tightening it up. I appreciate the time and effort they put into it. At this time I'll make a motion to approve Item #9.

**A MOTION** was made by Mayor Lilburn, seconded by Councilman Timmer, to approve the following actions:

1. Adopt a Notice of Exemption and instruct the City Clerk to file a Notice of Exemption with the County Clerk of the Board; and
2. Introduce Ordinance No. 415 (1) Amending Chapter 5.04 of the Highland Municipal Code to prohibit the issuance of a business license for commercial marijuana activity, (2) Amending Chapter 9.28 of the Highland Municipal Code to prohibit commercial marijuana activity and to regulate indoor marijuana cultivation on private residences, and (3) Amending Chapter 16.80 of the Zoning Code to prohibit commercial marijuana uses in all zones in the City and to allow limited indoor marijuana cultivation consistent with State law. Motion carried, 3-1, with Councilman Chavez dissenting and with Councilwoman Solano being absent.

City Clerk Hughes introduced Ordinance No. 415:

ORDINANCE NO. 415  
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HIGHLAND,  
CALIFORNIA, AMENDING CHAPTER 5.04 OF THE HIGHLAND MUNICIPAL  
CODE TO PROHIBIT THE ISSUANCE OF A BUSINESS LICENSE  
FOR COMMERCIAL MARIJUANA ACTIVITY, AMENDING CHAPTER 9.28  
OF THE HIGHLAND MUNICIPAL CODE TO PROHIBIT COMMERCIAL  
MARIJUANA ACTIVITY AND TO REGULATE INDOOR MARIJUANA CULTIVATION  
ON PRIVATE RESIDENCES CONSISTENT WITH STATE LAW, AND  
AMENDING CHAPTER 16.80 OF THE ZONING CODE TO PROHIBIT  
COMMERCIAL MARIJUANA USES IN ALL ZONES IN THE CITY AND TO  
ALLOW LIMITED INDOOR MARIJUANA CULTIVATION CONSISTENT WITH  
STATE LAW AND MAKING A FINDING OF EXEMPTION FROM  
CEQA UNDER SECTION 15061(b)(3) OF THE CEQA GUIDELINES

which title was read.

## CITY COUNCIL LEGISLATIVE

### 10. Appoint Two Members of the Public to the Planning Commission

City Clerk Hughes gave a brief review of the staff report. She opened the floor for nominations.

Councilman Chavez nominated Jerry Martin.

Councilman Timmer nominated the two incumbents.

City Clerk Hughes confirmed the two incumbents as Randall Hamerly and Marc Shaw.

City Clerk Hughes called for any other nominations. Seeing none, the floor is now closed and called for the vote.

Jerry Martin received one vote.

Randall Hamerly and Marc Shaw each received three votes.

The City Council has appointed the two incumbents, Randall Hamerly and Marc Shaw, to serve as members of the public to the Planning Commission. The Commissioner's terms are set to expire May, 2021.

### 11. Design Services Proposals/Engineering Resources of Southern California, Inc., for Two CDBG Pavement Rehabilitation Projects (Project Nos. ola16001 and ola17001)

Assistant Public Works Director Zamano gave a brief review of the staff report.

**A MOTION** was made by Mayor Pro Tem McCallon, seconded by Councilman Chavez, to:

1. Approve the proposals from Engineering Resources of Southern California, Inc., to provide engineering design services at a not-to-exceed fee of \$67,777 for two CDBG pavement rehabilitation projects (Project Nos. ola16001 and ola17001); and
2. Authorize the City Manager to approve contract amendments up to 10% of the contract amount. Motion carried, 4-0, with Councilwoman Solano being absent.

12. Updates on LAFCO, Omnitrans, SBCOG, SBCTA, SBIAA, SBVMWD, SCAG, SCAQMD, Work Program, Regional/Legislative Issues, Development Issues, Subcommittees and AB 1234/Council Member District Updates

Mayor Lilburn provided a brief update regarding Omnitrans and SBIAA.

Mayor Pro Tem McCallon stated he was in Washington D.C. last week lobbying for SCAQMD.

**ANNOUNCEMENTS**

May 29 at 10:00 a.m.	Memorial Day Service
May 30 at 9:30 a.m.	City Council Closed Session
May 30 at 10:00 a.m.	City Council Budget Study Session

**CLOSED SESSION**

None

**ADJOURN**

There being no further business, Mayor Lilburn adjourned the meeting at 6:33 p.m. in memory of David Clemens.

Submitted By:

Approved By:

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Betty Hughes, MMC  
City Clerk

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Penny Lilburn  
Mayor