CITY OF ARCATA
PLANNING COMMISSION REGULAR MEETING MINUTES

Approved as amended November 7, 2011 by unanimous vote

COUNCIL CHAMBER **October 11, 2011**
736 F Street, Arcata, CA 95521 **Tuesday, 7:00 p.m.**

A complete record of this meeting can be viewed by visiting the City's Website (www.cityofarcata.org) and clicking on "Watch Live Meetings" to access the Planning Commission Archives to view the Granicus Telecast. Approved minutes are found on the Commission/Committee website.

I. **ROLL CALL.** Commissioners Present: Robert Flint (Chair), Larry Blake, Chuck Giannini, Paul Hagen, Judith Mayer, and Daniel Tangney. Commissioners Absent: Julie Vaissade-Elcock (Vice Chair),

II. **ORAL COMMUNICATIONS.** This time is provided for people to address the Commission on matters not on the agenda. Any requests that require action will be set by the Commission to a future agenda or will be referred to Staff.

III. **APPROVAL OF MINUTES.**

A. Approve Minutes of August 23, 2011 – On Mayer's motion and second by Tangney, the minutes were approved as submitted by a 4-0-2 vote, Blake and Hagen abstaining as they were not present at the meetings.

IV. **PUBLIC HEARINGS.**

A. **SaiCenter Use Permit (File # 090-024-UP)**. The Commission continued the use permit public hearing for a medical marijuana collective proposed at 889 9th Street. The Commission opened the public hearing; received a staff report; accepted public testimony; and disapproved the Use Permit adopting action and findings as prepared by unanimous vote, on motion by Hagen and second by Giannini. Tangney recused himself citing his wife's business interest within 500 feet of the proposed location for the SaiCenter.

Giannini disclosed a conversation of general nature. Commissioners Blake and Hagen confirmed that they reviewed the public record and were confident taking action on the matter. Staff described why the recommendation had reversed to disapproval, including additional public testimony to the current and previous operations and problems in the application meeting the City's standards. In particular the source of marijuana was in question based on the application and applicant's testimony.

Staff informed the Commission that the City Council had clarified that they could take final action for denial but could not vote for approval due to the Department of Justice's stance on jurisdictions issuing permits allegedly in conflict with the Controlled Substances Act. Staff provided background on the use permit findings required to approve a project and reminded the Commission that if they could not make any one of the findings, the project must be disapproved.

Staff provided evidence supporting findings for denial. Among the negative impacts cited in public testimony were clients loitering, smoking marijuana, and public disturbances outside of the facility. Staff presented that operations specific to the SaiCenter, in particular since opening at the 9th Street location, were incompatible with the surrounding land uses. The illegal signage on K Street, the overt advertising of medical marijuana, and the shuttered presentation of the large storefront were cited in support of this argument. Staff presented by way of contrast that a business with less street presence might be compatible; the proposed location was not, however, compatible with the existing and likley future uses in the vicinity. Staff presented that the activities demonstrated over the weeks the business had been in operation suggested the operation does not adequately address impacts, and the use is not compatible with surrounding land uses, including the special consideration

features provided in LUC § 9.42.105.E.1.b. On these grounds, staff recommended denial of the use permit application.

Secondarily, staff suggested a denial could be based on the difference between the application and the applicant's testimony. Staff suggested that the suply of marijuana could not be granted as proposed in the applciation because the source jurisdiction does not permit cultivation for outside dispensaries. Staff closed the report asking for questions.

Commission had no questions of staff.

The public hearing was opened and Pat Sarlas of the SaiCenter testified that the City Council did not say that the Commission could continue to process applications or take any action on permits. She claimed that the Commission could not take a vote on the permit. She claimed that staff had misstated the SaiCenter's representation of the Redding permit. She claimed that the Council and Commission could not make any decisions, that the City's ordinance is illegal, and that the City employees could be liable for issuing a permit illegally. She claimed that the city's handling of the use permit, specifically continuing the September 27, 2011 hearing and generally other actions not disclosed, showed prejudice and malicious intent. She claimed that the City's continuance of the 27th hearing was intended to prevent the SaiCenter obtaining a decision prior to being evicted from their K street location so they could be singled out for denial. She claimed that the city now knows that the ordinance is not viable and that the SaiCenter should be able to continue to operate. She claimed that since HMS was able to continue to operate, the SaiCenter deserved equal protection under the law. Mrs. Sarlas asked if HMS was complying with the ordinance, and why the SaiCenter couldn't just continued to operate until the City figured out its ordinance. She asked how to correct the violation cited in the notice of violation they had received. She reiterated her interpretation of the council's action and asked that the Commission not to take action in opposition to that direction.

Mr. Gasparas testified the process hasn't been fair; that the intent of the process was to close the SaiCenter; and that he can't do any better than the proposed location. He stated that the city's ordinance was in violation of state and federal law. He claimed that his experience in federal court justified his interpretation of state and federal law. He offered his assistance to shield the City ordinance from the federal and state government. He cited the Compassionate Use Act (CUA) to demonstrate how the business license process complies but the use permit process does not.

Mr. Gasparas claimed that Chief Hansen, police chief of Redding, could verify that Redding does not regulate industrial grows. He stated that industrial grows are illegal and don't comply with the CUA. He claimed Chief Hansen was only concerned with the Redding dispensary, not the cultivation area. He stated that Chief Hansen required him to close the Redding dispensary. He stated that he knows the law and the Commission could choose to ignore his advice.

Mr. Gasparas reiterated the interpretation that the Commission could not take final action. He stated that making either a recommendation or a final action would be a final decision.

He suggested that the City should stop referring to his business as a dispensary because dispensaries are a violation of state law.

Mr. Gasparas stated that he completed all the tasks necessary to open business before there was a use permit process. He claimed that to make a no vote on an ordinance that violated state law would be a violation of state law. He claimed that the City could not regulate the number of collectives or the number of patients in each collective. He stated that the language of the CUA protected the City and that they should do no more than the CUA.

Mr. Gasparas said that he interpreted the September 27th continuation as confirmation that

the City did not have a legal ordinance. He stated that the City did not have a valid and complete ordinance. As a result, there is no certainty in the process. He said he was told that he needed to be compliant with all other city requirements first and zoning requirements last. He stated that the City told him to move closer to the Plaza.

Mr. Gasparas said his business is discrete and offered to change the curtains. He said his sign is inconspicuous. He said would address the trailer on K street however the city wanted him to.

Mr. Gasparas stated that the location was based on the wish of the City Council as described in the ordinance. He suggested that since the staff presentation in a previous hearing on the special consideration areas showed only one parcel was not included in a special consideration zone, and since the ordinance zoned his area a allowable for the use, if the City denied the permit on the basis that the location was not suitable, it would demonstrate malicious intent.

He stated that they have been operating adjacent to a residential zone and have had no complaints. He stated that he cannot watch for loitering 24 hours a day and that loitering was a problem in the area in general. He stated that they would clean up loitering if they were awarded a permit. He suggested that since HMS has had no impact, then the SaiCenter couldn't have an impact. He said past performance can't be used to say whether there will be an impact if the permit is issued.

Mr. Gasparas denied having said he had a verbal permit for his cultivation site in Redding. He cautioned the Commission to be careful on the moves they make. Mr. Gasparas handed out two letters in support of his business. He claimed that he has no control over transients on the streets and that none of the businesses do. He claimed that he was being discriminated against for being held to the standard that his business not have impacts related to loitering and near site marijuana smoking. He asked for clarification on how to fix the violation.

Public member John Albertson spoke on behalf of the SaiCenter. He stated that he has never seen people loitering in front of the dispensary. He stated that the vagrancy on the plaza is not related to the SaiCenter. He said as an American he has the right to decide where to get his medication.

Mark Sailors asked that the City do something about sandwich board signs. He said the SiaCenter should not be singled out for its sign.

Peter Hansen, Redding Chief of Police, testified that Redding past an ordinance regulating medical marijuana in fall of 2009. He stated that Mr. Gasparas received an application, but did not apply. Chief Hansen learned that Mr. Gasparas was operating and promptly shut him down. At the time, there were no specific guidelines for nurseries. At that time it was not a police issue. It was a planning issue. Since 2009, a nursery provision was adopted into the ordinance. The off-site nursery has to be permitted for a Redding dispensary that is permitted and other restrictions apply. Chief Hansen testified that if Mr. Gasparas is operating a nursery, he is doing so illegally. Chief Hansen submitted a police report to the record documenting much of what he testified. This report was not reviewed by the Planning Commission in deail, but is a part of the public record on the project.

Commissioner Hagen asked if Chief Hansen would remain for the rest of the item. Chief Hansen replied in the affirmative.

Mr. Gasparas rebutted Chief Hansen's testimony. He claimed that he never claimed he have a verbal permit. He claimed that the cultivation site is his personal garden. He said that Chief Hansen had labeled it a medical marijuana nursery but it in fact is his personal garden. He reiterated that a jurisdiction cannot issue a permit for a medical marijuana garden because that would violate state law. He started using the warehouse for personal

use before Redding had an ordinance on cultivation.

Staff clarified that the Redding site was relevant because his use permit cited the Redding location as his primary source of medical marijuana.

Commissioner Mayer asked whether the applicant was claiming that the source of SaiCenter marijuana needed no permit from Redding because he wasn't operating in the manner addressed in the Redding ordinance. Gasparas said that he can only get excess product. He said he cannot cultivate for the purpose of supplying a collective. Mayer clarified that the Arcata ordinance required that the supply be obtained consistent with the source jurisdiction regulations and asked whether he was saying that since there were only seven members that he was exempt from a permit. Mr. Gasparas stated that there were seven members of the SaiCenter that cultivated their personal gardens in Redding at his facility.

Commissioner Hagen asked for clarification on three statements in the record. First, clarify p. 35 of the operations manual regarding conversations with Redding police related to permitting. Mr. Gasparas clarified that the collective decision was not with the police chief, rather it was a decision within the collective. Second, supplemental attachment 1 of August 23 materials, explain the request for temporary use permit. Mr. Gasparas suggested that he could show good behavior if given a temporary use permit. He clarified it was for a trial period. Third, in the same document, asked the commission to make the decision based on the fact that the HMS is currently operating and the SaiCenter is farther away. Mr. Gasparas clarified that he has shown at his previous location that he operated without problems, and that the HMS shows that a collective can operate in the area.

Giannini asked staff to clarify the Council's action. City Attorney clarified that the suspension was to address exposure to DOJ action and addressed issuing permits. Denial was explicitly contemplated in the Council action. Hagen clarified that the Council directed that the City would continue to process permits, not approve a permit, but could deny a permit. The City Attorney confirmed this. Hagen asked if this was the City Attorney's legal counsel. She confirmed it was. More discussion of clarification on this issue ensued, and the City Attorney reiterated the staff interpretation of the ability to act.

Commissioners deliberated, each citing that some findings for approval could not be made. The findings for denial were discussed and confirmed. The Commission voted to adopt the findings and deny the permit.

V. BUSINESS ITEMS.

A. **Briefing Regarding Medical Marijuana Ordinance.** On motion by Hagen, second by Giannini, the Commission unanimously approved an agenda modification to hear this item before the public hearings due to its relevance to the use permit before the Commission. The City Attorney described legal issues pertaining to the City's ordinance and informed the Commission of the Council's decision to temporarily suspend effectiveness of use permits issued after October 5, 2011 for cultivation and dispensing.

B. **City of Arcata Local Coastal Program (LCP) Status Report.** Staff provided a brief status report on the LCP update. Staff informed the Commission of the Council's desire to hold a joint special meeting to discuss the City's options.

C. **Beekeeping Amendment.** Staff reported on proposed amendment to the Land Use Code to allow beekeeping in residential zones of the City. The City Council initiated this zoning ordinance amendment, but this was an informational item. It was not a noticed zoning ordinance amendment hearing. No action was taken on this item.

VI. CORRESPONDENCE.

VII. COMMISSION / STAFF COMMUNICATIONS.

A. PLANNING COMMISSION COMMUNICATIONS.

B. STAFF COMMUNICATIONS.

VIII. UPCOMING AGENDA ITEMS. NONE

IX. ADJOURNMENT. 9:50 p.m.

Arcata Municipal Code Section 2204.B Commissions. If any member of a commission is absent for four regularly scheduled meetings in a calendar year, the secretary to the commission shall certify that fact to the Council and the Council shall thereafter declare the position on the commission to be vacant.

2011 Meetings	Jan 11	Jan 25	Feb 8	Feb 22	Mar 8	Mar 22	Apr 12	Apr 26	May 10	May 24	Jun 14	Jun 28	Jul 12	Jul 26	Aug 9	Aug 23	Sep 13	Sep 27	Oct 11	Oct 25	Nov 8	Nov 22	Dec 13	Dec 27
Larry Blake																			X					
Robert Flint	X	X	X	X	X	X	*	X	X	X	X	X	S	X	X	X	*	*	X					
Chuck Giannini	X	X	X	X	X	X	*	X	X	X	X	X	S	X	X	X	*	*	X					
Paul Hagen																			X					
Judith Mayer	X	X	X	X	X	X	*	X	X	X	X	O	S	O	X	X	*	*	X					
Daniel Tangney	X	X	X	X	X	X	*	X	X	X	X	X	S	O	X	X	*	*	X					
Julie Vaissade-Elcock	X	X	X	X	X	O	*	X	X	X	X	X	S	X	X	X	*	*	O					

Note: Chair Flint; Vice Chair Vaissade-Elcock. Staff Liaisons: David Loya/Joe Mateer
X = present; O = absent; *= no meeting; S= special meeting (not considered regular attendance)

Attest: _____

David Loya, Deputy Director