

**AVALON CITY COUNCIL MEETING WILL ALSO INCLUDE A MEETING OF THE
CITY COUNCIL ACTING AS THE SUCCESSOR AGENCY TO THE
AVALON COMMUNITY IMPROVEMENT AGENCY
MONDAY, JANUARY 25, 2016- 9:00 A.M.
CITY HALL COUNCIL CHAMBERS
410 AVALON CANYON ROAD, AVALON
A G E N D A**

In compliance with the Americans with Disability Act, if you need special assistance to participate in this meeting, please contact Denise Radde, City Clerk (310) 510-0220. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title II). All public records relating to an agenda item on this agenda are available for the public inspection at the time the records are distributed to all, or a majority of all, members of the City Council. Such records shall be available at City Hall located at 410 Avalon Canyon Rd.

CALL TO ORDER / ROLL CALL

PLEDGE OF ALLEGIANCE

ANNOUNCEMENTS / WRITTEN COMMUNICATIONS

PRESENTATION -None

CITY MANAGER REPORT / CITY ATTORNEY REPORT

COUNCILMEMBER REPORTS / MAYOR REPORT

ORAL COMMUNICATION

Members of the public may address the City Council at this time. No action will be taken on non-agenda items at this meeting. Speakers should limit comments to three (3) minutes each.

******The first item in the Consent Calendar is the "City of Avalon acting for itself and as the Successor Agency to the Avalon Community Improvement Agency"**

CONSENT CALENDAR

1. Authorize a Contract with Jordahl Construction to Construct the Museum Stairs
At the December 15, 2015 meeting, the Successor Agency approved the construction plans and authorized staff to commence public bidding. State law allows a city to dispense with formal bidding where it will not produce a competitive advantage to the City or will not affect the final result.
Recommended Action
 - A. Determine that formal bidding for construction of the Museum Stairs would not provide an advantage to the City and that dispensing with formal bidding would serve the greatest public benefit.

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B. Authorize the City Manager to enter a contract with Jordahl Construction, in an amount not to exceed \$125,000, to construct the Museum Stairs in accordance with approved plans and specifications and subject to the terms and conditions of Jordahl Construction's existing contract with the City.

2. Amendment of Avalon Municipal Code Chapter 5-20 to Limit Cultivation of Medical Marijuana in the City

At the January 19, 2016 City Council meeting, the City Council decided to ban cultivation outright and introduced an ordinance banning all cultivation of medical marijuana in the City.

Recommended Action

Adopt ordinance amending the Municipal Code to limit cultivation of medical marijuana in the City.

GENERAL BUSINESS- None

NOTICE OF POSTING

I, Denise Radde, declare that the City Council Agenda January 25, 2016 was posted on Friday, January 22, 2016, on the City's website www.cityofavalon.com and at City Hall, 410 Avalon Canyon Road. Copies of agendas and staff reports are available at City Hall and on the City website.



Denise A. Radde, City Clerk / Interim City Manager

CITY COUNCIL FOR ITSELF AND ACTING AS SUCCESSOR AGENCY TO THE ACIA

MEETING DATE: January 25, 2016

AGENDA ITEM: 1

ORIGINATING DEP: Public Works

CITY MANAGER: RA

PREPARED BY: Dennis Jaich –Interim Director of Public Works

SUBJECT: Authorize a Contract with Jordahl Construction to Construct the Museum Stairs

RECOMMENDED ACTION(S):

1. Determine that formal bidding for construction of the Museum Stairs would not provide an advantage to the City and that dispensing with formal bidding would serve the greatest public benefit.
2. Authorize the City Manager to enter a contract with Jordahl Construction, in an amount not to exceed \$ 125,000.00 to construct the Museum Stairs in accordance with approved plans and specifications and subject to the terms and conditions of Jordahl Construction's existing contract with the City.

REPORT SUMMARY:

The Avalon Community Improvement Agency previously entered into a Sales and Disposition Agreement with Catalina Island Museum Society to develop an expanded museum, cultural center, and other ancillary uses at One Casino Way. The Agreement requires the Avalon Community Improvement Agency – and now the Successor Agency – to construct the staircase on the property.

At the December 15, 2015 meeting, the Successor Agency approved the construction plans and authorized staff to commence public bidding. In general, the City is required to award construction projects of \$5,000 or more through a formal bidding process. However, state law allows a city to dispense with formal bidding where it will not produce a competitive advantage to the city or will not affect the final result. (*Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631.)

In this particular case, staff recommends that the City dispense with public bidding for the following reasons: Jordahl Construction is already performing services on the Pebbly Beach Road K-Rail Project, which is within the same area of work as the Museum - located between Pebbly Beach Road and Casino Way. Jordahl is qualified to perform the construction work and has constructed similar stairs before on the island. . The Pebbly Beach Road Project may also involve construction of a wooden bridge walkway, which will be similar work. Additionally, because the ACIA (now Successor Agency) has an obligation to the Museum to complete this work, the work is time-sensitive, and additional time for bidding could lead to delays in completion. The time needed for public bidding could result in Jordahl no longer being on site,

which would cost City the competitive advantage gained by contracting immediately. The Museum previously received bids to complete the work, and Jordahl will complete the work at a lower cost than represented by these bids.

Essentially, the Museum Stairs construction is an additive change order to the Pebbly Beach Road Project. Because the contractor is already on the same location, is performing similar work, and is qualified to perform the work, the City is most likely to recognize the greatest cost savings by contracting with Jordahl. Added costs for mobilization and added time to complete a public bid will likely result in higher costs, to the City's detriment. Because there is an existing contract, a change order may be executed adding the Museum Stairs Construction scope of work. The change order would be subject to all of the existing terms and conditions of the contract.

GOAL ALIGNMENT: City Infrastructure.

FISCAL IMPACTS: The Successor Agency received \$50,000 in January 2016 through ROPS for this work; however, additional cost and expenses will be required based upon the new estimate of construction costs. At the January 19, 2016, meeting, the Successor Agency approved submitting an additional \$75,000 reimbursement through the FY16-17 ROPS. Staff therefore recommends that a not-to-exceed amount of \$ 125,000.00 be authorized.

CONSEQUENCES OF NOT FOLLOWING RECOMMENDED ACTION: The Successor Agency may provide direction to staff to continue with the solicitation of public bids. If no direction is given, the Successor Agency will not be able to fulfill its obligation to rebuild the stairs per the sales agreement. Any unspent funds received through the ROPS for the museum stairs construction would be returned to the State,

FOLLOW UP ACTION: None.

ADVERTISING, NOTICE AND PUBLIC CONTACT: Pursuant to the Brown Act.

ATTACHMENTS: The construction plans are available for review in the office of the Interim Director of Public Works.

CITY OF AVALON CITY COUNCIL

MEETING DATE: January 25, 2016

AGENDA ITEM: 2

ORIGINATING DEPT: City Attorney

CITY MANAGER: RR

PREPARED BY: City Attorney Scott Campbell

SUBJECT: Amendment of Avalon Municipal Code Chapter 5-20 to limit cultivation of medical marijuana in the City

RECOMMENDED ACTION(S): That the City Council adopt an ordinance amending the Municipal Code to limit cultivation of medical marijuana in the City

REPORT SUMMARY: After passage of the Medical Marijuana Regulation and Safety Act ("MMRSA") to comprehensively regulate medical marijuana, staff requested a memo from the City Attorney regarding recommended alterations to the Avalon Municipal Code ("AMC"). At the December 15, 2015 City Council meeting, the City Council introduced an ordinance allowing limited cultivation of medical marijuana in the City, and directed the City Attorney to obtain examples of what other cities are doing to limit or regulate cultivation.

At the January 19, 2016 City Council meeting, the City Council decided to ban cultivation outright, and introduced an ordinance banning all cultivation of medical marijuana in the City. The attached Ordinance amends the AMC to prohibit cultivation in all instances throughout the City. It retains the previously suggested definition of "cultivation," which will make clear what activities are being regulated and which fully comports with the language of the MMRSA. The ordinance removes previously considered exemptions to allow cultivation by qualified patients and primary caregivers in the City, which means that the AMC will now prohibit all cultivation, even by those individuals.

If the City does not pass the current ordinance, it risks losing the authority to regulate. As of March 1, 2016, state law will govern cultivation unless the City has adopted an ordinance. AB 21, currently before the State Assembly, would remove this deadline, but passage is not guaranteed, and current amendments indicate the law may do harm to local ability to regulate cultivation after passage, indicating the City should attempt to regulate as soon as possible. Given the nature of the proposed amendments, it does not appear that passage of AB 21 is likely, so the March 1, 2016 deadline is likely to remain in effect. Assuming the City takes action before the State imposed deadline, it can always alter its regulatory scheme, or remove it entirely, after the deadline. So long as the City steps into the field by enacting an ordinance prior to March 1, 2016, it can alter its regulations at a later date without ceding authority to the State. In order to make sure that the ordinance is in effect on March 1, 2016, and not just adopted by that date, the City Council is being asked to adopt the ordinance today rather than at the meeting of February 2, 2016.

FISCAL IMPACTS: No financial impact is anticipated for the adoption of the proposed Ordinance.

CONSEQUENCES OF NOT FOLLOWING RECOMMENDED ACTION: The Municipal Code will not address cultivation of marijuana. As of March 1, 2016, state law will govern in Avalon, and will allow for various types and amounts of cultivation based on application for one of a regime of state licenses that will become available to cultivators within the City.

FOLLOW UP ACTION: Adopt ordinance and publish in newspaper.

ADVERTISING, NOTICE AND PUBLIC CONTACT: Pursuant to the Brown Act.

ATTACHMENTS: Proposed Ordinance

ORDINANCE NO. ____

**AN ORDINANCE AMENDING TITLE 5, CHAPTER 20 OF
THE AVALON MUNICIPAL CODE TO LIMIT
CANNABIS CULTIVATION IN THE CITY**

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as Health & Safety Code Section 11362.5 et seq. and entitled "The Compassionate Use Act of 1996"); and

WHEREAS, the intent of Proposition 215 was to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under state law; and

WHEREAS, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program ("MMP"), codified as Health and Safety Code Section 11362.7 et seq., which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under the Penal Code; and

WHEREAS, neither the Compassionate Use Act ("CUA") nor the MMP require nor impose an affirmative duty or mandate upon local governments to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within its jurisdiction; and

WHEREAS, in May 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, holding that cities have the authority to regulate or ban outright medical marijuana land uses; and

WHEREAS, under the Federal Controlled Substances Act, codified in 21 U.S.C. Section 801 et seq., the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

WHEREAS, on October 9, 2015, Governor Jerry Brown signed the "Medical Marijuana Regulation and Safety Act" ("Act") into law; and

WHEREAS, the Act becomes effective January 1, 2016 and contains provisions which allow for local governments to regulate licenses and certain activities thereunder; and

WHEREAS, the Act contains a provision which sets forth that the State shall become the sole authority for regulation under certain parts of the Act, unless local governments have "land use regulations or ordinances regulating or prohibiting the cultivation of marijuana..." (Health and Safety Code §11362.777(c)(4); and

WHEREAS, several California cities have reported negative impacts of marijuana cultivation, processing, and distribution uses, including offensive odors, illegal sales, and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests; and

WHEREAS, marijuana plants, as they begin to flower and for a period of two months or more, produce a strong odor, and detectable far beyond property boundaries if grown outdoors; and

WHEREAS, the strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery, or armed robbery; and

WHEREAS, the indoor cultivation of marijuana has potential adverse effects to the health and safety of the occupants; including structural damage to the building due to increased moisture and excessive mold growth which can occur and can pose a risk of fire and electrocution; additionally, the use of pesticides and fertilizers can lead to chemical contamination within the structure; and

WHEREAS, the Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that nearby homes or businesses may be negatively impacted by nuisance activity such as loitering or crime; and

WHEREAS, based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the City due to the establishment and operation of marijuana cultivation, processing, and distribution uses; and

WHEREAS, the City's Municipal Code ("Code") does not address the cultivation and processing of medical cannabis; and

WHEREAS, based on the findings above, the potential establishment of cannabis cultivation uses in the City without regulation poses a current and immediate threat to the public health, safety and welfare in the City due to the negative land use and other impacts of such uses as described above; and therefore:

THE CITY COUNCIL OF THE CITY OF AVALON DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 5-20.01 of the Avalon Municipal Code ("AMC") is hereby amended to add:

"Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

SECTION 2. Section 5-20.07 is hereby added to the AMC as follows:

Sec. 5-20.07 Marijuana Cultivation

(a) Cultivation of marijuana shall be considered a prohibited use in all zoning districts of the City. No use permit, variance, building permit, or any other entitlement or permit, whether administrative or discretionary, shall be approved or issued for the establishment of any marijuana cultivation uses as defined herein in any zoning district, and no person shall otherwise establish such businesses or operations in any zoning district.

SECTION 3. CEQA Exemption.

The City Council finds that the amendments to the AMC made pursuant to this Ordinance are exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that it will not have a significant effect or physical change to the environment.

SECTION 4. Severability.

If any section, subsection, subdivision, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, such decisions shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional.

SECTION 5. Certification and Effective Date.

The City Clerk of the City of Avalon shall certify the passage and adoption of this Ordinance and shall cause the same, or a summary thereof, to be published and/or posted in the manner required by law. This Ordinance shall take effect thirty (30) days after its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Avalon on the 19th of January, 2016 by the following vote:

Ayes: Marshall, Olsen and Cassidy

Noes: Hernandez and Sampson

Absent: None

Abstain: None

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Avalon on this 25th day of January, 2016 by the following vote:

Ayes:
Noes:
Absent:
Abstain:

Ann H. Marshall, Mayor

ATTEST:

Denise A. Radde, City Clerk

APPROVED AS TO FORM:

Scott Campbell, City Attorney
Best Best & Krieger, LLP