

**CITY OF SAN DIEGO  
SMALL BUSINESS ADVISORY BOARD  
MEETING MINUTES**

November 5, 2004

World Trade Center, Seminar Room  
1250 Sixth Avenue, 10<sup>th</sup> Floor  
San Diego, CA 92101

<b>BOARD MEMBERS PRESENT</b>	<b>BOARD MEMBERS ABSENT</b>
Auday Arabo Faith Bautista George Chandler Jesse Navarro Judy Preston Warren Simon Richard Sims	Kurt Chilcott Scott Cummins Spencer Skeen Chi Tran

<b>CITY STAFF</b>
Steven Bal, Office of Small Business Kelly Broughton, Development Services Department Coleen Clementson, Planning Department Meredith Dibden Brown, Office of Small Business Russ Gibbon, Economic Development Division Gary Halbert, Development Services Department Ron Halbritter, Development Services Department Lynette Jones, Office of Small Business Jeff Kawar, Economic Development Division Janet Wood, Office of Small Business

<b>OTHERS PRESENT</b>
Rick Hernandez, San Diego Gas and Electric Pete Kanelos, Walmart Stores, Inc. Debbie Kelley, American Lung Association of San Diego Scott Kessler, Business Improvement District Council Carla Vallone, Segway LLC Joe Welsh, Segway of Pacific Beach Alan Ziegaus, Southwest Strategies

## **Introduction**

- Mr. George Chandler called the meeting to order at 8:20 a.m.

## **Approval of Minutes**

- The minutes of October 1, 2004 were voted upon and unanimously approved.

## **Public Comment**

- Mr. Peter Kanelos, Manager of Western Division Community Affairs for Walmart Stores, Inc., commented that the recommendation from the Community Planner's Committee (CPC) is a better alternative for the proposed Big Box Retailers Ordinance for San Diego, since their recommendation opposes size restrictions on large scale retail businesses within the City and focuses upon a more regulated permit process. The City's recommendation would incorporate size restrictions. He stated that free market competition creates more jobs, lower prices, and improves customer service for everyone. He added that they hope the SBAB will support the CPC's recommendation.
- Mr. Joe Welsh is opening up a store in Pacific Beach that will sell and rent the Segway Human Transporter. Ms. Carla Vallone is from Segway Human Transporters, LLC, based in New Hampshire, but works from her home in San Diego. Mr. Welsh stated that the Land Use and Housing (LU&H) Committee will be considering regulations pertaining to the Segway Human Transporter at the November 10 meeting. State law permits human transporters to be used on sidewalks and allows local governments to make regulations. He asked for support from the SBAB for the zero emissions transportation alternative. Ms. Vallone commented that when the item was brought forth over one year ago, there was no specific action. However, there will be action taken at the November 10 LU&H meeting. The issue will be addressed at the December 3 meeting.

## **Business Improvement District (BID) Council Report: Scott Kessler, BID Council**

- Mr. Kessler reported that the BID Council was selected to manage the December Nights annual event, beginning in 2004. They have signed a five-year contract to manage the annual event.

## **Development Services Department (DSD) Action Plan: Kelly Broughton, (DSD) and Gary Halbert (DSD)**

Mr. Broughton and Mr. Halbert provided an update on DSD activities, particularly with respect to several audits that have been conducted:

- An independent audit was completed in December 2003 by Maximus and the report was distributed in March 2004. The Maximus report focused upon issues identified by stakeholders including City Councilmembers, community groups, interested citizens, and applicants. The report addressed issues such as long turn around time, inconsistency in the review process, excessive costs, and poor staff attitude.
- The Zero Based Management Review (ZBMR) conducted by the Select Committee on Government Efficiency and Fiscal Reform, chaired by Councilmember Maienschein. The report

is now available on the City's website at [www.sandiego.gov](http://www.sandiego.gov). DSD staff has drafted a response to the ZBMR report and will be going in front of the Committee on December 9. The report will be available to the SBAB after it has been released to the Council. The ZBMR report focused upon the areas of customer service and streamlining of operations. The ZBMR recommendations include investment in the work force, i.e., providing training, accountability, improving customer service, and improving the work environment. Almost all of the recommendations reflect current DSD initiatives.

- DSD has also been working with the Budget Working Committee, chaired by Councilmember Toni Atkins and Councilmember Scott Peters. The report has been completed, but has not been distributed as of this date.
- Mr. Ric Sims requested that DSD staff present a comprehensive scorecard report to the SBAB within the next two months, focusing specifically upon customer service to small businesses.
- The Public Safety and Neighborhood Services (PS&NS) Committee directed DSD, along with the City Attorney's Office, to draft regulations pertaining to the On Premises Alcohol Beverage Outlets which will be brought back to PS&NS for Council consideration. Mr. Broughton stated that the City Attorney was directed to seek input from interest groups on the issue. If members know of any specific groups that may be interested in participating, they should contact either Mr. Broughton or Ms. Lynette Jones. Mr. Scott Kessler commented that the item was recently on their BID Council agenda and the BID Council could provide their input on the issue. Mr. Auday Arabo stated that he attended the PS&NS meeting as a representative of the SBAB.
- DSD is taking a fourth update to City Council on November 9. Over the next couple of months, Mr. Broughton will be compiling a comprehensive list of code amendments that DSD has received input from City staff, small businesses and other interest groups. DSD will be going to LU&H to have them prioritize the elements. Before finalizing the report, Mr. Broughton will bring the list to the SBAB to obtain their input on prioritization, in addition to the global factors that were already provided. Mr. Chandler asked Mr. Broughton to provide it to the SBAB prior to the meeting. Mr. Halbert commented that the "Smart Codes" do connect with the code amendments, but he sees them as two different efforts.
- Ms. Judy Preston and Mr. Jesse Navarro commented that they have noticed a tremendous positive cultural change in DSD's Records Section.

**Proposed Ordinance to License Tobacco Retailers: Debbie Kelley, American Lung Association (ALA) and Mr. Auday Arabo, California Independent Grocers and Convenience Stores and SBAB Member**

Ms. Kelley introduced herself as the Vice-President of Government Relations for the American Lung Association and represents 30 member organizations in the Coalition for Tobacco Free Communities. She provided the following information in support for the ordinance to license tobacco retailers:

- The ALA has been working with law enforcement for a number of years on the problem of tobacco sales to minors. A conference was held that was devoted to the issue of sales to minors and approximately 100 members from the law enforcement community attended. They conducted a survey on what would be most helpful in reducing sales to minors. On a scale of 0 to 5, with 5 being the highest, licensure of tobacco retailers ranked the highest at 4.6 on the scale.

- They have annually conducted workgroup presentations for law enforcement personnel involved in enforcement of tobacco sales. Additionally, they have co-sponsored trainings with the State of California on how to implement penal code 308 restricting the sale of tobacco to minors. They also distribute training manuals to law enforcement agencies on how to conduct operations and have also gone out with various law enforcement agencies on several sweeps.
- Law enforcement informed the ALA that there are insufficient resources to enforce the existing laws. Additionally, it would be beneficial if the ALA could provide data to the communities about the problem, so that they could inform and educate elected officials about the problem in their own communities.
- The ALA conducted a survey of 16 of the 18 municipalities within the County of San Diego. Training was conducted for their nine partner agencies on protocol, which was approved by the State of California. All of the minors were 16 and 17 years old and went through the training.
- In the City of San Diego, there were 264 stores chosen at random (out of 1200 retail businesses) spread out among the Council Districts. According to the ALA survey, about 44 percent of the stores ended up selling tobacco to the minors, which was the second highest rate in the County. The City of La Mesa had the highest rate and the City of El Cajon has the third worst rate. The City of El Cajon has adopted a tobacco licensure ordinance and the City of La Mesa is currently working on one.
- State law (AB 71) requires tobacco retailers to be licensed. The purpose of the law was to address tobacco smuggling and taxation for revenue. There are no funds for enforcing laws pertaining to the sale of tobacco to minors. Administrative sanctions for businesses that violate AB 71 include the loss of licensure for the eighth violation. Ms. Kelley stated that it is a mathematically impossible goal, since the State Board of Equalization has informed them that there are no funds for enforcement and that no agency at the State level will do it.
- The annual \$250 fee collected from retailers would be utilized to ensure adequate funding levels to administer and enforce the ordinance. The ALA has made several compromises. The schedule of penalties will not be in the ordinance, but will be in the Police procedures manual. Also, there are no background checks, no registration of employees, and no private enforcement clause. There will be a sunset clause, which enables the permit requirement to expire in 5 years.

Mr. Arabo thanked the Board for addressing the issue and that he would abstain from any vote on the issue. He provided the following information in opposition to the ordinance to license tobacco retailers:

- There are over 700 independent grocers and they represent retail interests, not tobacco interests. The independent grocers are also interested in reducing and eliminating the sale of tobacco to minors, but by a very different means.
- The characterization made that law enforcement is stating there is a problem, was previously unheard of and is inaccurate. He cited the survey for the City of El Cajon as an example, stating that although El Cajon adopted their ordinance, the Chief of Police was opposed to it. El Cajon's survey showed 6 percent of the retail businesses selling tobacco to minors, not 43 percent as cited in ALA's survey. He also cited the discrepancy in the survey done in the City of La Mesa that had 5 out of 88 stores selling tobacco to minors, instead of the 53 percent cited by the ALA.

- The proposed ordinance is an anti-business issue, because it has been opposed by numerous business groups including the San Diego Regional Chamber of Commerce and their smaller boards. He stated that law enforcement agencies are opposed, since there are pre-existing laws to address the issue of tobacco sale to minors. It creates funding for law enforcement on the backs of small businesses.
- As a result of AB 71, the number of retailers in the County has been revised from the earlier estimate of 3500 to approximately 1200 retailers.
- The background check and other clauses in the ordinance would make the proposed ordinance very anti-business. There is no correlation that licensure of retailers will reduce the sale of tobacco to minors. The California Independent Grocers and Convenience Stores is the only group in the State that supports licensing of retailers, since they believe policy should come from the State level and not on a piecemeal from city to city.
- The ALA survey was funded by the County, but he has never seen the survey data.
- Suggested that the San Diego Police Department (SDPD) find funds from Propositions 10 and 99, where the funds are earmarked to prevention groups for education. The funds are frequently used for advocacy rather than on education, adding that the SDPD can use the funds to educate the public.
- Although the survey results may have 30 or 40 percent of the retail businesses selling tobacco to minors, it still isn't the majority and the majority should not be licensed for the faults of the few.
- Mr. Ric Sims asked what the average revenue is for the 1200 tobacco vendors. Mr. Arabo commented that it is difficult to know, because there are the convenience stores and large vendors such as grocery stores. Ms. Kelley commented that there isn't much information available about the revenues from selling tobacco. She stated that on the website of the National Association of Convenience Stores, the average annual revenue from tobacco sales is \$340,000. She stated that tobacco sales have a higher profit margin.
- Mr. Sims stated that he perceives the issue as balancing the interests of small business while protecting the health of children. Ms. Kelley stated that she appreciates looking at the larger picture, since the issue for them is all about children.
- Ms. Kelley remarked that the Tobacco Stakeholders Task Force, which was established at the direction of PS&NS had discussed tying the permit fee into the revenue stream of the business. However, public health groups felt that the law then would not be a deterrent that would protect minors. The City Attorney's Office stated that the permit fee has to be based on the actual cost of enforcement.
- Mr. Navarro stated that he is very much opposed to the sale of tobacco to minors. He expressed concern about creating another fee and ordinance in the City that impacts small business owners when there are existing laws that govern tobacco sales. He noted that the purpose of the SBAB is to be advocates for small business and not to create additional obstacles for small business.
- Ms. Kelley stated that the law would have to be a Police-regulated business to be implemented in San Diego. The City Attorney's report will include an analysis of the State laws pertaining to

tobacco sale. She added that it is up to the local governments to take action, since the State is facing a budget crisis and is unable to come up with revenues for enforcement.

- Mr. Warren Simon stated in his role as Executive Director of the Hillcrest Association, he has come across all kinds of permit fees, based upon someone not following the proper procedure, so there is a precedent. He has not polled the businesses in Hillcrest yet to obtain their input.
- Ms. Faith Bautista commented that from her perspective as a mother and a small business owner, she supports the proposed ordinance, because it isn't all about revenue and profitability. She is strongly opposed to stores selling tobacco to minors.
- Mr. Kessler stated that the BID Council has not yet taken up the issue and welcomed the presenters to address the issue at their BID Council meeting. He noted that government regulation has been identified as the number one impediment to small business owners along with increases in insurance rates. The Board needs to ask if the additional fees will lead to the type of behavior it's intended to address, adding that it's doubtful. It may create a larger bureaucracy and more funds, but it doesn't necessarily translate into a public health mandate.
- Mr. Sims commented that he was unclear on how much more enforcement the City would receive from the additional fees and the study showing the impact on deterring the sale to minors. Mr. Arabo commented that the SDPD would receive approximately \$300,000 in fees. The funds would enable SDPD to have 2 detectives and 1 compliance officer that would be assigned to full-time tobacco enforcement. Currently, the tobacco industry pays \$1 billion a year to the State of California of which the funds are supposed to go to the cities and counties.
- Mr. Navarro stated that whatever recommendation the SBAB makes, it needs to be based on an analysis of accurate and complete information. Mr. Sims commented that there is no real economic impact data pertaining to small business. Mr. Chandler suggested expanding the current Task Force to encompass representatives from the SBAB and the BID Council to address the impact to small businesses.
- Ms. Kelley commented that Mr. Navarro should abstain from voting, since he worked as a contact for Mr. Arabo, a representative on the Tobacco Stakeholders Task Force. Mr. Arabo explained that he was using Mr. Navarro of the District Attorney's Office as a contact in his attempt to investigate the validity of the immunity and the length of the immunity for the ALA. The ALA needed immunity from the District Attorney's Office, because no non-Peace Officer may conduct a survey using minors (Penal Code 308). Mr. Navarro stated that he will recuse himself if anyone from the Board asks him to. Ms. Preston added that she appreciates the passion from both sides of the issue.
- **Mr. Navarro motioned for the SBAB to recommend to the Public Safety and Neighborhood Services Committee to delay the "Proposed Ordinance to License Tobacco Retailers" for 60 days. The delay will enable SBAB members to review and discuss the Manager's report, including any available economic impact analysis data pertaining to the proposed Ordinance. Furthermore, the SBAB requests having more small business representation in the current Tobacco Stakeholders Task Force, including members from the SBAB (Mr. Warren Simon) and the BID Council (Mr. Scott Kessler). The motion was voted upon and unanimously approved with Mr. Arabo abstaining. The letter to PS&NS will be prepared by Office of Small Business staff for review and signature by Mr. Chandler.**

## Proposed Ordinance for Big Box Retailers: Colleen Clementson, Planning Department

Ms. Clementson introduced herself as being a staff member of the City Planning Department. She presented the following information:

- Over the past 5 years she has been charged with managing the City's General Plan Update, including the City of Villages and the adoption of the Strategic Framework Element.
- In July 2003, LU&H asked the Planning Department to look into developing regulations for large retail development, placed in the context of the City of Villages. Since they received the direction from LU&H, they have held several workshops with the Planning Commission and other interested community groups. They are planning to go back to the Planning Commission on December 2, return to LU&H in January or February 2005 and go to City Council after that.
- She provided an overview of the draft ordinance:
  - **150,000 square-foot building size limit** for large retail establishments in areas that are designated Community Commercial throughout the City. It would not apply to areas that are designated Regional Commercial which includes downtown, parts of Mission Valley, and University Towne Centre.
  - **100,000 square-foot threshold for discretionary review** in the Community Commercial zones and planned districts.
  - **50,000 square-foot threshold for additional design regulations** would kick-in
  - **Incentives for improved design:** building square-footage bonuses (10,000 or 20,000 square feet) for large retail establishments that incorporate a public plaza, etc.
  - *Based upon a recommendation from Community Planners Committee, the Planning Department is considering adding a provision to the ordinance requiring a Neighborhood Development Permit for all large retail buildings between 50,000 and 99,999 square feet. It would allow for community input.*
- Other ordinances that have been proposed, including the proposed "SKU" ordinance, which is based upon the number of bar codes that a particular store has. The ordinance would be based upon the number of SKUs, building size, and percentage of a building's floor area dedicated to non-taxable items. The SKUs are very difficult for the City to regulate and Planning would have to look for someone in the City with expertise in the area. The Planning Department's recommendations are rooted in the design and character of the building and how it fits in with the community.
- The Planning Commission has held four different workshops, but they haven't made a recommendation yet.
- The TAC has also looked at the proposed ordinance and felt there shouldn't be an ordinance at all. If there was to be an ordinance, it should be incentive-based.
- The CPC (which is comprised of one representative from each community planning group) recommended no upper limit and a lower threshold for discretionary review (90,000 square feet). At 50,000 square feet the CPC wants a Neighborhood Development Permit.
- The Planning Department has yet to craft an ordinance that all interested groups can agree upon. They hope to take an ordinance forward that has some support from many community groups.

- Mr. Kessler reported that the BID Council has been addressing the issue for over one year. The presentations at BID Council meetings have included representatives from grocery stores and union management. The BID Council looked at the proposals from the Planning Department and the Labor Union Coalition. The BID Council believes that big box retail stores in older communities will destroy the fabric of the small business community and negatively impact the City of Villages. The big box retailers wouldn't serve as anchors, because their stores have everything under one roof, which would drive out small businesses, since they would be unable to compete with larger retailers.
- The BID Council approves a large retail development ordinance limiting store size and merchandise to 90,000 square feet, 10 percent non-taxables, and 30,000 SKUs. If any one of these three criteria is exceeded, an economic impact report will be required. It doesn't apply to the Regional Commercial Centers. He mentioned that Mr. Russ Gibbon of the Community and Economic Development had prepared a wonderful economic report pertaining to the impact of big box retailers in the older commercial districts. The BID Council would ask the store operator or developer to pay for the report, which would be done by City professional staff.
- Mr. Arabo asked if there was any economic impact data for San Diego, since the report he reviewed contained no data from San Diego. Mr. Gibbon replied that they used a combination of methodologies from other studies and plugged San Diego data into it to arrive at some numbers that they were comfortable with. The best studies were conducted by Dr. Boarnet and Dr. Crane for the Orange County Business Council and the Bay Area Economic Forum. Both of those reports were comprehensive to arrive at what the report's authors thought the economic impact would be from supercenters. Walmart contracted with the Los Angeles County Economic Development Corporation to do their own study which looks at the positive impacts of supercenters and what the benefit would be to consumers. For the City's report they used methodologies from both as a matter of fairness. They used the methodology from Dr. Boarnet and Dr. Crane to look at the negative potential impact and used the Walmart methodology to look at the potential benefits to consumers. Based upon their study, there would be no net gain. There is more of a potential for a negative fiscal impact, since the supercenters would be selling items at a cheaper rate, resulting in lower than taxable sales overall.
- Mr. Arabo asked what factors are driving the ordinance. Ms. Clementson responded that there is a trend toward larger buildings, and the City wants to maintain the scale of communities in the context of Smart Growth and the City of Villages. The proposed ordinance doesn't restrict large buildings within the City, but within designated areas. They want to encourage mixed use development that includes public transit.
- Ms. Preston commented that she is an advocate of the City of Villages, adding that over time there are draws that attract residents to downtown areas. There used to be department stores that were located in downtown urban areas and then they moved. She feels that the small businesses will be successful in the City of Villages.
- Mr. Sims observed that the livable wage needs to be considered by the SBAB, observing that from the report, it appears that Walmart employees on the average do not receive a livable wage. Mr. Gibbon responded that it depends on how livable wage is defined and that the Center for Policy Initiatives has come up with an amount of \$12 per hour. Many retailers pay wages in the same range as Walmart does and they used the same standard in evaluating smaller retailers.



- Mr. Peter Kanelos of Walmart Stores, Inc. commented that they feel the economic analysis study performed by Mr. Gibbon's is flawed and they would like to have an economist from a reliable agency to explain the problems with the study. It is his understanding that this is a land use issue and it is a land use issue when design is involved. Also, Walmart has opportunities for all their associates to advance within the company, with two-thirds of their management starting at the hourly associate level. The average wage in California is over \$10 per hour and their part-time and full-time associates are eligible for benefits. Their store prices are 15 to 20 percent lower than other retail stores.
- Mr. Kanelos expressed concern that the City was using information from the United Food Commercial Workers who have a longstanding campaign against Walmart. Since there wasn't one positive aspect about Walmart in the report, they feel that Mr. Gibbon's study was flawed and is meant to serve some sort of agenda. Mr. Jeff Kavar, Deputy Director of the Community and Economic Development responded that Mr. Gibbons is an Economist that reports to him. The objective of the economic analysis study was to objectively look at the impact of big box retailers in the City. He stated that Walmart representative(s) may share their perspective with either Mr. Gibbon's or himself in advance of the SBAB meeting on December 3 and staff will consider the information in their analysis. Ms. Lynette Jones clarified that small business in San Diego is defined as employers having 12 or fewer employees, so they are referring to micro small business districts and the focus of the issue is the impact upon them.
- Mr. Kessler remarked that there is ample evidence that when Walmart opens up stores across the country, small businesses and main streets shut down, which is the BID Council's concern. They are not concerned about the wages. It is the viability of small business owners inability to compete against big box retailer chains.
- Several members stated that they are looking for information pertaining to the economic impact that Walmart would have when they move into a small business community.
- Mr. Arabo stated that perhaps the City should look at having big box centers on a case-by-case basis, adding that he would not want to have them in older commercial locations.
- Mr. Sims commented that there needs to be a balance of information and to consider any process that allows for future adjustments as the City changes.
- **Mr. Arabo motioned for the SBAB to table the issue until the December 3 meeting. This will provide SBAB members with an opportunity to obtain more information from Walmart and to review the recommendations from both the BID Council and Community Planners Committee. The motion was voted upon and unanimously approved.**

#### **New Business**

- Beginning in January 2005, the SBAB meetings would be changed from the first Friday of the month to the third Wednesday of the month. This was done to accommodate members that have had schedule conflicts.

#### **Meeting Adjournment**

- The meeting was adjourned at 10:10 a.m.