

**MEETING OF THE
WOOD VILLAGE CITY COUNCIL
April 16, 2015
MINUTES**

PRESENT: Mayor Patricia Smith, Council President Tim Clark, Councilors Scott Harden, Bruce Nissen and Jimmy Frank, Attorney Kelly Hossaini, City Administrator Bill Peterson, Finance Director Peggy Minter, Public Works Director Mark Gunter, and interested parties.

ABSENT: City Attorney Jeff Condit.

MAYOR SMITH CALLED THE MEETING TO ORDER AT 6:00 PM.

CITIZEN COMMENTS

There were none.

PUBLIC SAFETY REPORT

Chief Deputy Jason Gates of the Multnomah County Sheriff's Office presented the report, and stated that for the month of March there was 182 hours of service, 365 calls, 49 written reports, and 17 arrests. Gates stated that an interesting case of note was a stolen semi-truck and trailer. The company used the truck's GPS to locate the unit which was in Utah. Gates explained that Utah police recovered the unit, and the million dollars' worth of cargo.

Gates stated that there was an incident on March 26th in Maywood Park. Gates explained that Deputy O'Donnell stopped a pedestrian and discovered there was a warrant. Gates stated that there was a struggle, and the suspect got ahold of the Deputy's knife. Gates explained that Deputy O'Donnell was able to arrest the suspect, and there were no major injuries.

Gates stated that there was an incident on March 11th regarding a possible kidnapping and suicidal person. Gates explained that the responding deputies conducted a high risk stop, and the suspect was taken into custody without incident. Gates stated that there was another incident involving three juvenile suspects out past curfew. Gates explained that they had spray paint, but there was no indication that they had been involved with any graffiti. Gates stated that the deputies sent them home, and informed their parents and JDH of the situation.

Gates stated that the BOEC system went, and the MCSO had to implement their ICS system with the use of portable VHF radios. Harden asked if there are drills for this type of incident. Gates stated that it is something they plan for, but it is not easy. Gates explained that BOEC can relay information, but no information was getting back to BOEC. Responses had to be transmitted on a separate system.

Gates stated that the County Commission will be hearing a presentation on the Troutdale merger, and a final vote will occur in May. Gates explained that the MCSO is already working on the transition process, and Wood Village will see a lot more law enforcement presence with the merger. Gates stated that even though there are people who were not in favor of the merger, it will be up to the MCSO to display the quality service and value.

The Council thanked Gates and the MCSO for the report and service.

CONSENT CALENDAR:

- Review of bills paid in March, 2015

- Contracts \$2,500 - \$50,000
- Evoqua Water Tech – Bioxide: \$6,600
- Council Minutes:
 - March 10, 2015
 - March 26, 2015

Upon motion by Clark, seconded by Harden and passing 5-0, the Consent Calendar was approved.

PUBLIC HEARING: ORDINANCE 2-2015 LAND USE AND MUNICIPAL CODE REVISIONS TO PERMIT MARIJUANA RELATED BUSINESSES IN THE CITY

Smith read the hearings disclosure statement, and asked if there were any conflicts of interest.

There were none.

Smith opened the Public Hearing, and asked for the staff report presentation.

Peterson presented the staff report, and stated that he will present a brief history of medical and recreational marijuana in Oregon, as well as the recommendation from the Planning Commission. Peterson explained that it is his responsibility to advocate for the Planning Commission's decision, but the final decision is up to the Council.

Peterson stated that medical marijuana came to the attention of the City about a year ago. There was legislation that allowed dispensaries to locate in cities throughout the state. Peterson stated that cities were able to adopt a one-year moratorium to help plan for the use, but that moratorium ends on May 1st. Peterson stated that a combined workshop with the Council and Planning Commission was held earlier this year, and the focus was on where and how these facilities could locate in the City.

Peterson explained that the outcome of that session was a consensus on moving forward with zoning to permit marijuana facilities in the Neighborhood Commercial Zone. Peterson stated that the Planning Commission had a hearing on the proposed code revisions to permit the use in the Neighborhood Commercial Zone, and the minutes of that meeting are included in the background materials. Peterson explained that the Planning Commission voted 3-0 with one member abstaining to recommend the code revisions.

Peterson stated that while the City was in the process of working out medical marijuana, the voters in the state approved recreational marijuana which will take effect on July 1st. Peterson stated that while the new law does not legalize marijuana, it does decriminalize marijuana. Peterson explained that even though marijuana is still illegal under federal law, the state will not prosecute. Peterson stated that the federal government has a policy of not enforcing marijuana laws for those states that have decriminalized it, but that could change.

Peterson stated that marijuana is classified as a schedule 1 drug under federal law, but it is permitted under Oregon law. Peterson explained that the law was put together in such a way that if jurisdictions did not craft separate zoning requirements, then they could locate in any zone that would permit any similar facility. Peterson stated that while the state law outlines four types of marijuana licenses that can be obtained including retail, processing, warehousing, and production, this code provision only covers the retail sales section.

Peterson explained that the key point for the marijuana dispensaries is that they must be licensed by the state. Peterson stated that the state will issue a license for any applicant that meets the criteria, but that does not necessarily allow them to open in a certain City or area. Peterson explained that while the state issues a license, cities can decide where and how the facilities can locate through their land use laws. Peterson stated that the legislation only prescribes one way to ban dispensaries, and that is a citizen petition to place the measure on a General Election ballot. Peterson explained that even if a citizen petition was approved, it still would not be able to stop or change personal possession, use, or growth.

Peterson stated that the City of Cave Junction is in the process of litigating an appeal to the appeal court regarding prohibiting the land use in the City. Peterson explained that the circuit court had ruled in favor of the City, but there was an appeal. Peterson stated that the League of Oregon Cities has provided cities with a legal opinion on this issue, and the opinion was that cities could use home rule to prohibit the land use, but there is a high risk of litigation.

Smith asked when a decision will be reached in the Cave Junction case. Hossaini stated that the court of appeals does not have a timeline, so it could be awhile. Peterson stated that there is significant risk in prohibiting the land use because of the high probability of litigation. Peterson explained that while the circuit court ruled in favor of Cave Junction, that does not mean our circuit court would rule in favor of the City.

Peterson stated that if the Council proceeds with the land use recommendation from the Planning Commission, then there are additional provisions of the code that would need revised as well. Peterson explained that the both the zoning and municipal code require business to follow and federal, state, and local laws. Peterson stated that language would need to be revised, and proposed language is in the code. Peterson explained that the new language does not remove the federal requirements, but it does indicate that business can locate in the City if they are in accordance with state law.

Peterson stated that the Council has the ability to decide where the facilities can locate, as well as time place and manner restrictions which could include packaging and labeling of edibles. Peterson stated that the OLCC is overseeing the rule making process which will most likely include those items. Peterson stated that he recommends leaving those items out for the time being. Peterson explained that the statute would permit these facilities in the Commercial/Industrial Zone, General Manufacturing Zone, Light Manufacturing Zone, Town Center, and the Neighborhood Commercial Zone. Peterson stated that the Planning Commission recommended the Neighborhood Commercial Zone because the type and character of the business best fits with the intent and purpose of the zone. The use is also proposed as a conditional use which would require a public notice and hearing to be approved.

Peterson stated that there could be up to eight facilities located in the City if no action was taken. Peterson explained that includes a 1,000 foot buffer from parks, schools and other dispensaries. Peterson stated that there could be three dispensaries if the use was only permitted in the Neighborhood Commercial Zone. Peterson explained that there could be a facility at 242nd and Glisan, to the west on Halsey, and there is a state licensed facility across the street from City Hall.

Peterson stated that the Council has the discretionary ability to act or not act. Peterson explained that the moratorium expires on May 1st, and the Council could use the home rule provision to prevent facilities from locating in the City. Peterson stated that the Council could also approve the code amendments. Peterson explained that to amend the code, the new code language must better meet the purpose and underlying conditions of the code. Peterson stated that there are two types of uses defined under the proposed code, and they are medical, and other sales. Additional conditions include that the same site cannot be a grow site, or located within the exclusion zones. Peterson explained that the language drafted regarding the federal prohibition was done by legal counsel, and acknowledges the state law.

Peterson stated that the Neighborhood Commercial Zone is intended to have retail and non-retail uses that are mixed use and have light traffic. Peterson explained that the size of these facilities would meet the intent of the zone. Peterson stated that the Council can review additional regulations for time, place or manner. The Council could also not take any action, or select a different area for zoning. Peterson stated that the criteria for amending the code has been met, and the Planning Commission recommended the code for adoption.

Peterson stated that a Public Hearing does need to occur, but he is able to answer any questions before the hearing.

Harden stated that he understands that there could be up to eight potential shops if the City does not take any action, or prohibit the use. Peterson stated that is correct. Hossaini stated that the state law will be the default if the City does not take any action. The Council can attempt to preempt the state law through home rule to prevent the land use in the City. Harden asked if a potential shop owner could get a court order to locate in the City. Hossaini stated that is correct, and that is just one potential avenue that could be taken. Peterson stated that none of those options would be clean, and it could end up costing the City a lot of money. Harden stated that the City could end up spending a lot of time and money to fight the issue, and still end up with marijuana facilities.

Frank stated that we do not know how the court will rule on the matter. Harden stated that the results for measure 91 was 60% to 40% in favor of recreational marijuana. Peterson stated that the Planning Commission reviewed the policy extensively including a prohibition, but their recommendation was to amend the code for the Neighborhood Commercial Zone as a conditional use.

Clark stated that he read the Planning Commission minutes, and stated that it seemed the Neighborhood Commercial Zone was selected because of access and visibility. Peterson stated that was part of the reason, but also the other zones in the City were not designed or intended for medium intensity retail uses. Peterson explained that is why the Neighborhood Commercial zone was created.

Smith opened the floor for public comments.

Larry Michelson from 18890 SE Tillstron Road in Damascus stated he is not for or against marijuana. Michelson stated that his son has a proposed shop in the City, and having a controlled and regulated facility may help reduce access for children and reduce the black market. Michelson stated that the proposed regulations would limit the City to three potential sites. Smith stated that people will be able to grow the product on their own. Michelson stated that some people may not want to grow it, and these facilities could reduce the number of grow sites, and provided a regulated and tested product.

Aaron Michelson from 634 SE 18th Ln, in Gresham stated that he feels this use should be treated just like any other business. Michelson stated that he does not necessarily agree with having the use as a conditional use, and these facilities could be a positive for the community.

Joe from Happy Valley stated that this is a losing battle at this point. Joe stated that the City should focus on finding a way that is best for the community because the land use will happen either through the City or lawyers. Joe stated that he is a friend of Michelson, and supports this use.

There was no further public testimony.

Smith closed the public hearing.

Smith stated that she is against this use. Smith explained that kids and adults are overdosing on these products,

and we need to protect the children. Smith stated that she feels this will be a big money maker for outside interests. Smith stated that we have worked for years to get people to stop smoking, and now this would encourage additional smoking. Smith stated that marijuana can be a gateway drug just like alcohol. Smith stated that some people can handle it, others cannot. Smith stated that marijuana is still illegal under federal law, and does not want it in the City.

Clark stated that he has a problem with this use on Halsey which is a main street in the City. Clark stated that he has a vision of Halsey being a gateway through the City, and does not see these facilities in that vision. Clark stated that while 60% of voters in the City voted in favor of measure 91, there is no one here to advocate for or against this land use. Clark asked what the surrounding cities did with this land use. Peterson stated that Troutdale and Fairview authorized the use in out of the way industrial areas. Clark stated that he can see the concerns on both sides of the issue. Hossaini stated that there could be some issues with a retail use in industrial zones because of Metro's Title 4 requirements.

Harden stated that he is in favor of adopting the recommendation. Harden stated that better than 60% of the voters in the City voted for recreational marijuana. Harden stated that there have been studies that indicate that there is no additional crime in areas with these facilities. The people who use this as medicine want safe and secure access. Smith stated that people could still grow it themselves. Harden stated that having shops could keep others from selling their excess marijuana, and he does not want additional drug dealers in the community. Harden stated that waiting for the Cave Junction decision could take a long time, and could be irrelevant anyway. Harden stated that there could be eight locations of the City does nothing, or we could adopt a legal and legitimate code for three locations.

Harden stated that one of the proposed bills that did not make it out of a legislative committee would have permitted cities to ban the use outright. Harden stated that he does not feel that there were be any support at the state level to try to implement a local ban.

Nissen asked if Mayor's Corner is a formal park. Peterson stated that it is not a formally declared park. Nissen stated that that he does not support marijuana use, but having this land use in the Neighborhood Commercial Zone would keep it in the public's eye. Nissen stated that having legal and regulated facilities should help reduce illegal or renegade operations.

Frank stated that he is struggling with this issue because he took an oath of office to uphold the laws and constitution of the United States. Frank stated that his inclination is to not support this land use because marijuana is still illegal under federal law. Frank stated that there has been discussions about the federal government changing the classification, but that has not happened yet. Frank stated that he cannot vote for this when he took an oath to support laws of the United States.

Clark asked if there was support for the conditional use classification. Harden stated that he likes the conditional use because it would allow additional discussions regarding time, place, and manner of sales. Harden stated that some of the overdosing issues were because people ate marijuana infused products that were poorly packaged.

Clark asked about the 1,000 foot exclusion zone, and what kind of impact that would have. Peterson stated that the state licensed facility across from City Hall is just outside the exclusion zone. Another facility could locate at least 1,000 feet west on Halsey, and there could be a facility at 242nd and Glisan. Clark stated that we are only one square mile, and three locations seems like a lot. Harden stated that there could be eight sites under the state law. Harden stated that he is not in favor of a prohibition, and all potentially addictive substances should be banned from the City if that is the argument.

Smith asked how the voting could work if there is a split vote. Hossaini stated that both readings can occur on the

same night if there is unanimous consent, otherwise the readings have to be done at separate meetings. Harden stated that there is not discussion on the issue if a second meeting is needed for the second reading. Peterson stated that is correct. Frank asked the difference between abstaining from a vote, and a no vote. Hossaini stated that voting for the first reading by title only does not advocate for the ordinance, it just votes for the ordinance to be read. Hoassini explained that the first reading can be done tonight, and the seconding reading and final vote done at the next meeting.

Clark stated that he is against the use. Harden stated that it is not up to the Council to decide to be against the use or not because that was decided by the voters. Clark asked what options are available if the Council does not act. Peterson stated that the Council could use the Cave Junction case and not issue any business license to marijuana facilities. Peterson explained that a court will then decide the outcome. Clark asked why there is a rush to approve this issue. Peterson stated that the moratorium expires on May 1st, and then the state statute takes over if there is nothing in place. Frank stated that he is in favor of not issuing business licenses to marijuana facilities because they violate federal law.

Nissen stated that there could only be three locations instead of eight if the Council moves forward with the proposed amendment. Hossaini stated that the hearing could also been continued to the April 28th meeting which would give the Council more time to collect information, and continue the discussion. Hossaini stated that the final decision could be made after May 1st, but there would be a window of opportunity for someone to file a lawsuit.

Clark stated that he would like to continue the hearing, because there are issue of the law in question. Frank stated that the real driver behind this action is the eight potential locations if the City does not take any action. Frank stated that he would appreciate additional time to research that matter, and to see if there are any alternatives.

Peterson stated that the state law would allow the facilities to locate in any commercial, industrial, or agricultural zone. Peterson explained that would include the City's Commercial/Industrial Zone, General Manufacturing Zone, Light Manufacturing Zone, Town Center, and Neighborhood Commercial Zone. Peterson presented a zoning map, and where potential facilities could locate.

Peterson stated that the current business license code requires all business to meet all federal, state and local laws. Peterson explained that the council can direct that no license be issued to marijuana outlets based on that criteria. Peterson stated that an owner could file suite, and the court would decide if the business can locate in the City. Peterson stated that there has been a lot of discussion about home rule authority on this issue, and conclusion is that no one knows what the outcome will be. Clark asked if that applies to both medical and recreational marijuana. Peterson stated that it would apply to both, but it would impact medical marijuana first.

Peterson stated that if the City asserts home rule and the plaintiff is successful, they could locate anywhere in the City that the statute allows. Frank asked if that action would then prevent the City from adopting a land use action. Peterson stated that it depends on where the person chose to locate, and if it was a class action. Hossaini stated that even if you adopted land use regulations after the fact, you would not be able to zone the person out of their location. The business would exist as a non-conforming use.

Clark asked what would occur if there were subsequent changes in the law. Peterson stated that once a facility establishes a location, there cannot be rules which take away their right to locate in that facility. Hossaini stated that permits and licenses can having changing terms and conditions, and they are not considered a property right. Clark asked what would occur of the City had regulations on packaging, but then the state came out with different standards. Peterson stated that if the state came out with more constrictive regulations then it is not an issue. If

the regulations were less restrictive, then it would depend on how that law was crafted.

Harden stated that this has been in play for over a year, and something should be done. Peterson stated that there was a delay because of Measure 91, and how that would factor into this issue. Frank stated that there are also two new Councilors, and stated how he feels that more time is needed to review the issues.

Minter asked what the potential costs of litigation could be. Hossaini stated that it could be thousands to tens of thousands of dollars depending on how deep the litigation would go. Peterson stated that the amicus brief filed by the League of Oregon Cities cost about \$11,000, and Cave Junction had spent over \$30,000 until the League stepped in. Clark stated that he cannot see spending that kind of money when the local voters approved it.

Upon motion by Harden, seconded by Nissen and passing 5-0, the first reading by title only of Ordinance 2-2015 amending and revising the wood village zoning and development code to permit medical marijuana dispensaries and recreational marijuana sales as a conditional use in the neighborhood commercial zone was approved.

Minter gave the first reading by title only of Ordinance 2-2015.

Upon motion by Harden, seconded by Nissen and failing 1-3-1 with Harden yea, Clark, Nissen, and Frank nay, and Smith abstaining, there was no second reading of Ordinance 2-2015 amending and revising the wood village zoning and development code to permit medical marijuana dispensaries and recreational marijuana sales as a conditional use in the neighborhood commercial zone, and the matter was continued to the April 28, 2015 City Council meeting.

PRESENTATION: PROPOSED ANNUAL PERFORMANCE PLAN

Peterson presented the proposed Annual Performance Plan, and stated that the Council is familiar with the purpose and approach to the plan. Peterson explained that the Council approves a packet of projects to be completed in the following year, and the purpose is stretch the organization and hold the administrator accountable for achieving the plan. Peterson stated that about 80% of what staff does on a routine basis is not in the plan.

Peterson presented the projects for each goal. The projects for goal one included supporting the rebuild of Arata Road, additional community banners, promoting the graffiti removal programs, redesign the City entry signs, and televise the City Council meetings. Peterson stated that the projects for goal two included evaluating the fire service delivery and additional alternatives, and emphasize/promote emergency management.

Peterson stated that the projects for goal three included the scheduled City events and adding a City wide garage sale, moving TreeHill's water distribution to the upper zone, complete SCADA upgrades, install a gravel access path from City Hall to Bridge Street, implement a pavement management system, renovate and restore the City entry features, complete the park master plan, apply for a park trail expansion grant, develop a summer park lunch program, complete the sewer SDC's, complete the Halsey i&i project, and implement education programs at City Hall.

Peterson stated that the project for goal four include continuing the meet or beat economic development promotions; complete the Transportation System Plan update, review the potential sale of City Hall, redefine the Town Center Master Plan and zone , and establish a Multi-City Economic Developer. Peterson stated that the projects for goal five include completing targeted safety training twice annually, complete a staff team building training, and benchmark a service/best practice.

Peterson stated that the projects for goal six include attending the four cities managers meetings, have active staff

participation in support of elected officials at Metro and regional meetings, take part in the Halsey Corridor Plan, and participate in the League of Oregon Cities Legislative Committees. Peterson stated that the project for goal seven include redesigning and rebuilding Mayor's Corner, and conducting tree planting projects.

Peterson explained that there are about 1,600 hours available to complete projects on the APP, and there are about 1,500 hours' worth of projects. Peterson stated that the large time consuming projects include the free lunch program. Clark stated that he did not think the City was going to move forward with that project. Peterson stated that the Council voted 3-2 to move forward with the program. Peterson stated that the other larger time consuming projects include the Town Center Master Plan and Transportation System Plan Update, the Sewer SDC's, the potential sale of City Hall, the Arata Road construction support, completing the Halsey I&I project, participating in the Halsey Corridor project, and establishing a multi-city Economic Developer.

Peterson stated that there is nothing in the list that is not achievable. Harden asked about the Halsey Corridor project, and what it would entail. Harden asked if any work can be done on that project without a significant amount of resource. Peterson stated that the project would probably start off with applying for a Community Planning Grant, and there is some resource available in the Urban Renewal Agency to take on moderate projects. Clark asked if there has been any interest at the county level. Peterson stated that he has spoken to three people at the county, and he has received three different responses. Clark asked how much time this project will take. Peterson stated that he is planning on being the co-author of the grant which would be about 20 hours. Clark asked if there is a matching requirement for the grant. Peterson stated that it is about 15%, and \$5,000 is being proposed in the upcoming budget to fund the match. Harden stated that he is concerned about spending resources on a project that may never be built. Clark stated that he is committed to the project. Peterson stated that even if the end result are flower baskets and banners on Halsey that is an improvement. Nissen stated that there seems to be some room for projects, and this looks like a good place to start. Peterson stated that the end product will be a paper report that could potentially be used in the future.

Clark asked about the items that go through all the months, and asked if they should be treated as routine items. Peterson stated that some of those items are on the APP because the Council made them a priority, and the Council receives a monthly report on those activities. Peterson explained that the Council also requested staff support at regional meetings and committees. Clark stated that he views those types of items are routine, and would be okay reduce the number of APP hours.

Clark asked why the televising of the City Council meetings goes all the way across the calendar year. Peterson stated that was to ensure the successful implementation and execution of televising and posting the Council meetings. Clark asked when the project would be considered complete. Peterson stated that he thought the project would be considered complete when the installation is complete, and the meetings are on a routine schedule for Metro East Media. Clark asked when the cameras would be installed. Peterson explained that a list is already put together so Metro East can purchase the equipment in July. Peterson stated that the installation will probably be completed by early fall. Clark stated that he would consider the project complete at that time. Peterson stated that he will revise that schedule.

Peterson stated that the APP will be brought back at the next Council meeting for adoption.

DISCUSSION: ANNUAL EASTER EGG HUNT RECAP

HR/Records Manager Greg Dirks presented the report, and stated that the event was on Saturday, April 4th. Dirks explained that the event went really well, and was attended by about 2,000 people. Dirks stated that the helicopter was grounded due to weather, but the Easter Bunny was delivered to the event by Multnomah County Animal Services. Dirks explained that about 70 volunteers were on hand to help at the event, and the majority of them came from Emilio Inc.

Dirks stated that there was 15,000 eggs filled with candy and prize tickets. In addition to the eggs, there were 300

reusable shopping bags filled with egg dying kits that were free while supplies lasted. Dirks explained that Emilio Inc. offered free face painting and balloons animals as well. Dirks stated that the 3-4 year old field was fenced off from parents and divided into four sections. As a result parents stayed out of the field, and there were no lost children.

Dirks stated that donations for the event totaled \$3,350, and the expenses were about \$3,450. Dirks explained that not including staff time, the City was out of pocket about \$100 for the event. Dirks stated that overall it was one of the best Easter Egg Hunts in some time. The Council agreed, and thanked Dirks for the report.

DISCUSSION: ANNUAL NITE OUT EVENT

Dirks presented the discussion and stated that the 17th annual Nite Out is scheduled for Friday, July 17th. Dirks explained that the bulk of the event is similar to the past few years. There will be a parade prior to the event that starts at City Hall and ends up at the event site. Dirks explained that there has been some revisions to the schedule to help reduce conflicts and overtime for the MCSO.

Dirks stated that a feature that needs a decision is the give-away items for this year. Dirks explained that three year ago the City gave out emergency preparedness items. The past two years has been free bicycle helmets for kids. Dirks stated that the event partners from the MCSO and Baptist Church thought that it might be a good idea to have free sports equipment such as basketballs, footballs and soccer balls for the children. Dirks stated that giving out those items could help encourage kids to get out and play more, and potentially join a club or sports team. Dirks explained that the remaining helmets from last year could be given out as well. The Council liked the idea of the sports equipment.

Clark asked if aerial photography could be added to the event this year. Clark stated that this event is special, and it would be great to have photos of the full event site. Clark stated that a photo from one of the helicopters, or from the fire ladder would work. Dirks stated that he would look into those options as well as a drone photographer. Dirks explained that the prosed budget for this event is \$6,000, and staff will work with area businesses for sponsorship options. The Council thanked Dirks for the report.

ADJOURN

With no further business coming before the Council, and upon motion by Clark, seconded by Harden and passing 5-0, the Council adjourned at 8:45pm.

Patricia Smith
Mayor

Date

ATTEST:

Greg Dirks