

CITY OF ALBANY
CITY COUNCIL WORK SESSION
Municipal Court Room
Monday, January 6, 2014
4:00 p.m.

MINUTES

CALL TO ORDER

Mayor Sharon Konopa called the meeting to order at 4:00 p.m.

ROLL CALL

Councilors present: Councilors Floyd Collins, Bessie Johnson, Rich Kellum, Ray Kopczynski, and Dick Olsen.

Councilors absent: Councilor Bill Coburn (excused)

BUSINESS FROM THE PUBLIC

Greg Bechtel, 978 Ferry Street SW, distributed a document about the Oregon Medical Marijuana Program [see agenda file] to the Council.

Scott Pierson, 1908 Cascade Heights NW, commented about the agenda item relating to medical marijuana. He said his company conducts random drug tests, and employees have lost their jobs because they have tested positive. He said he has heard both sides of the marijuana issue and is unsure where he stands on the issue. He said the Department of Justice has identified eight enforcement priorities regarding marijuana. Those are: 1. Preventing the distribution of marijuana to minors. 2. Preventing revenue from the sale of marijuana from going to criminal enterprises. 3. Preventing the diversion of marijuana from states where it is legal under state law. 4. Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or activities. 5. Preventing violence. 6. Preventing drugged driving. 7. Preventing the growing of marijuana on public lands. 8. Preventing marijuana possession or use on federal property. He said he doesn't know if marijuana will be legalized in the near future, but he would prefer for the Council to see what happens in other communities and states.

COMMUNITY SURVEY

Management Systems Director Bob Woods gave a PowerPoint presentation [see agenda file]. He distributed a draft 2014 residents' satisfaction survey [see agenda file], which he plans to have ready for distribution in the next month or two. In 2008, Advanced Research Marketing mailed surveys to random Albany registered voters. He said the cost of the 2008 survey was \$9,714.61 and had a high return rate. The last survey was done in 2009 and was structured after the National Citizens Survey. He said the cost was \$2,318.27. Links to the online survey were mailed to 2,000 random households in the City. The response rate for the survey was low with only 183 responses. The process to access the survey may have been cumbersome for some citizens and may have contributed to the low response rate. He said the 2014 survey will be virtually the same as the 2009 survey. He said the 2014 survey will be sent to approximately 24,000 email addresses, is available in English and Spanish, and takes an average of 10-15 minutes to complete. There is no additional cost for this survey except for staff time. He said the data collected from the completed surveys is helpful to track how the City is doing, and will provide staff with additional information. SurveyMonkey is what is being used for the surveys, and it doesn't track individual addresses. It only allows for the survey to be taken once per computer.

Konopa said some of the email addresses are for folks who don't live in the City. She asked how that is being handled. Woods said there is a notation at the beginning of the survey asking people to only complete the survey if they are an Albany resident.

Councilor Rich Kellum asked what will be done with the information that is gathered from the surveys. Woods said the information is used for International City/County Management Association reporting so staff can compare City services to other cities' services. It gives staff a benchmark to indicate where Albany falls in the continuum of similar services. He said staff would like to conduct a survey on an annual basis in order to review the changes each year.

City Manager Wes Hare said the survey also helps direct the Strategic Plan process. He said the Plan should have some basis of what the citizens want.

Councilor Ray Kopczynski asked what the timeline is for the survey. Woods said staff is considering sending it out with the next issue of *City Bridges*. He said it could also be sent out as a separate e-mail. The Council thought it would be best to send it out as a separate e-mail. Kellum suggested sending it out soon because the feedback could be used while considering the budget. Woods said that the survey can be sent out instantaneously, but it will take time to analyze the data.

Public Information Officer/Management Assistant Marilyn Smith suggested doing a preview of the survey in the next issue of *City Bridges* so people know it is coming and then the actual survey can be sent out a week or two later.

Councilor Bessie Johnson asked if the survey sends any type of personal information to the City. She wants to make sure citizens' personal information remains anonymous. Woods said that SurveyMonkey has the ability to collect IP addresses, which is the computer code. He said most IP addresses change on a weekly basis. However, the City has turned that tracking feature off and will not collect IP addresses. City Attorney Jim Delapoe suggested incorporating a sentence indicating a promise of confidentiality. He said this gives the City an argument to resist a public records request trying to access the information.

Konopa said that the data collected in the past has been useful. She said the Police Department was able to target problematic areas based on information received.

MEDICAL MARIJUANA DISPENSARIES DISCUSSIONS

Hare said, by motion, Council directed staff to come back with a proposed ban of medical marijuana dispensaries using the City's land use code. He said that creates a process that allows community input and how the Council might want to respond to the input. The first public hearing in the process has been scheduled for January 27, 2014, at the Planning Commission. He said the Planning Commission will be considering strengthening language in the land development code to make it clear that property in Albany can't be used in a way that would violate federal law. He said he has had a discussion with Konopa to talk about possible alternatives to banning such as limiting the placement of medical marijuana dispensaries within the City. He mentioned he and other staff went to a meeting in Clackamas County to discuss different techniques that could be used.

Delapoe said there are several alternatives communities in Oregon may be considering. The first alternative is to do nothing, which he believes most communities will choose. He said if that alternative is followed, the state will make decisions about licensing and regulating dispensaries. He said the state law will prohibit dispensaries from being in residentially zoned areas, within 1,000 feet of a school, within 1,000 feet of other dispensaries, and from being located at a grow site. The second alternative is to rely on existing language to state that dispensaries aren't allowed. The third alternative, for cities that issue business licenses, is to deny business licenses to marijuana dispensaries. The fourth alternative is to take existing language and supplement it to make it explicit. He said the proposed additional sentence would state "*no parcel of land or structure may be used for or in conjunction with an activity that violates any state or federal law prohibiting the manufacture, distribution, dispensation, or possession of any controlled substance as that term is defined by 21 U.S.C. 802*". He said this will allow for two public hearings and community comment. The last alternative is the possibility of adopting supplemental regulations. He said the problem with doing this is if the regulations are challenged, the City has less ability to defend against the challenge versus an outright ban.

Konopa said she heard that the rules at the state level are supposed to be decided by a committee and then adopted at the session. Hare said the legislation created a committee which has met and reached substantial agreement on the administrative rules. Delapoe said those changes should be made next week. Konopa asked if it would be helpful for the Council to prepare a resolution encouraging the committee to add language to keep dispensaries a certain number of feet away from residential zones or if it would hurt Albany's defense if we are changing code language. Delapoe said the Council could prepare a resolution, but he doesn't think the request would be granted. The committee's job is to add detail to the state law. He said state law already indicates that dispensaries must be on property that is zoned industrial, commercial, mixed-use, or agricultural. To try to further define distances is likely more than what the committee is authorized to do.

Konopa said the state doesn't recognize cities have neighborhood-commercial areas. Delapoe said there will not be any adverse impacts if the Council addresses the committee. Kellum asked if dispensaries are required to be a certain distance from residential zones. Delapoe said no, dispensaries just can't be in residential zones. Delapoe said the Council has the alternative to adopt their own regulations, and he would do his best to defend them if challenged. He said he has a stronger case if there is a ban. Kellum said, we have to stay on track to make the March 1, 2014, deadline. Delapoe said if the City has language in place before any dispensaries are in operation, there will be a better legal argument against anyone who would make a claim about regulatory taking. He said an alternative the Council could choose is to do nothing for now and wait to see if it is a problem in six months or a year. He believes that it is likely that there will be an initiative on the ballot this fall to legalize, in some form or another, the recreational use of marijuana.

Johnson said the state doesn't deal with each city's needs. She would be interested in hearing what the committee has come up with so far. She said just because the state makes many of the decisions, doesn't mean it is the right decisions for every city.

Kellum said the Council only has one choice and that is to follow whatever the law is. He said we can't ignore what the federal law is. Delapoe said right now, the federal laws aren't being enforced by virtue of the decision by the Attorney General, but that can be changed if there is a different Attorney General. He said the City doing nothing is not illegal. Discussion followed.

Councilor Floyd Collins said if City language is left alone, and the state moves forward and adopts their administrative rules, they will have a licensing process. He said, we can make the City code known to those issuing licenses and then they have to make a choice to issue the license over the top of our local regulations. Delapoe said the state will still issue the licenses and then it will be up to each city to take enforcement action if they wish. Collins said the state will still review to make sure they aren't in 1,000 feet of public or private schools. Delapoe said that is correct; staff is preparing a map to provide to the state that will indicate where all the public and private schools are. Collins summarized that the City will be consistent with the federal law, we will be able to provide some level of input to ensure our

community that the issuance of a license may be restricted, the City won't likely be exposed to future action, and we won't have a proliferation of dispensaries. He said people will be watching how the process plays out. Delapoer agreed with Collins' remarks and said it is easier to file an injunction to close a dispensary if he has explicit language.

Kopczynski said this discussion is for the medicinal marijuana side of things. He said the state signed off on the use of medical marijuana over ten years ago even though it is technically against federal law. If you try to restrict how people access getting a legal prescription, it could open the City up to potential legal ramifications. He asked, if we ban dispensaries because it is against federal law, how will that change the priorities of what police do within the community. He asked, will police be knocking on private residence's doors that are dispensing medical marijuana?

Police Chief Mario Lattanzio said it will be based on information the Police Department receives. He said staffing is limited and issues have to be prioritized. He said the main issues right now are property and drug crimes. Hare clarified that a private residence couldn't legally operate a dispensary under the state law. A dispensary can only operate in a commercial zone.

Johnson said the state passes laws without testing them first. She asked if anyone can operate a dispensary. Delapoer said the operator can have one drug conviction in the past five years, and there is no corresponding restriction for employees. Johnson said it's terrible that the federal government is not prosecuting those who are breaking the laws. She said the Council needs to be proactive rather than reactive.

Collins asked if dispensary employees have to have the same standards as an operator. Delapoer said no. Collins asked if a minor can be employed by a dispensary. Delapoer said he believes they cannot be under the age of 18, but a person under 18 can get medical marijuana.

Konopa said the Council originally directed staff to proceed forward with the Planning Commission route on the code language change which is scheduled for January 27. She asked if the Council still wants to proceed with this plan.

Kopczynski said he doesn't want to move forward. Councilor Dick Olsen agreed with Kopczynski.

Johnson and Kellum said they want to move forward with taking the code language change to the Planning Commission. Delapoer clarified that doing nothing doesn't subject the Council or City to a federal felony. Hare said doing nothing also assures that there will likely be dispensaries in Albany.

Collins asked if federal law prohibits the use of medical marijuana. Delapoer said he doesn't believe that medicinal use of marijuana is recognized by the federal government. Collins said the dilemma he is faced with is the issue with federal law and the inconsistencies; on the other hand, having been through the process where there are medical needs, he can understand a potential medical use. He said there are over 58,000 medical marijuana cards when it was estimated at the beginning that there would only be a need of 4,000-5,000. He believes there is an abuse of the medical process, and the medical board needs to take a look at the doctors prescribing the cards indiscriminately.

Kopczynski said he thinks this whole issue will probably go away in one or two years. Olsen said there are people who want to use marijuana legally for medicinal reasons and they are not easily able to do this. Collins said Councilor Bill Coburn should have the opportunity to take part in this conversation.

COUNCILOR COMMENTS

None.

CITY MANAGER'S REPORT

Delapoer introduced Deputy City Attorney Sean Kidd. Kidd has 13 years of legal experience with extensive work in real estate and land use law. He will be a regular attendee at City Council Work Session meetings in order to get an understanding of the political pulse. Kidd is taking over working with the Police Department and handling city prosecution. He said they function well as a team and invited the City Council to stop by his office and chat.

ADJOURNMENT

There being no other business, the meeting was adjourned at 5:25 p.m.

Respectfully submitted,

Reviewed by,

Diana Eilers
Administrative Assistant I

Stewart Taylor
Finance Director