

CITY OF ALBANY  
SPECIAL CITY COUNCIL WORK SESSION  
Council Chambers  
Monday, November 2, 2015  
7:15 p.m.

## MINUTES

## CALL TO ORDER

Mayor Sharon Konopa called the meeting to order at 7:15 p.m.

## ROLL CALL

Councilors Present: Councilors Bill Coburn, Floyd Collins, Bessie Johnson, Rich Kellum, Ray Kopczynski, and Dick Olsen

Councilors Absent: None

## MARIJUANA REGULATIONS AND LOCAL OPTIONS

City Attorney Sean Kidd said the City Council previously directed that staff come back with options on marijuana regulations. He gave a presentation on Local Options Regarding Marijuana Regulations, which included the following options as well as maps showing how each option would affect areas of the City.

Option A: Do nothing and leave the ordinance the way it currently exists. The City could place additional time, place, and manner regulations such as not allowing facilities to be located within 1,000 feet of each other. The City would share in tax revenue but that amount is yet to be determined. Cities are allocated 10% of all taxes collected based on population, and counties are allocated an additional 10%. Council could adopt an ordinance referring the question of banning recreational facilities to a future ballot and, if that passed, facilities would not be grandfathered in. The Council could also choose to put an additional 3% tax on the November 2016 ballot. Discussion followed regarding the amount of tax revenue that might be expected to be received.

Option B: Rescind the current ban on medical dispensaries selling recreational marijuana and then adopt an ordinance banning recreational facilities. This option would allow the City to evaluate how early sales impact the City related to enforcement. The City would not be able to share in the tax revenue generated from early sales. If voters adopt the ban in November 2016, all recreational marijuana sales would end by December 31, 2016. If voters reject the ban, recreational facilities would be able to open as soon as applications were processed by the state.

In response to questions from the Council, Kidd said none of the proposed actions would affect current medical dispensaries which are grandfathered in. Council could ban any new medical dispensaries, wholesalers or producers; however, medical grow sites were left off of uses that can be outright banned. The Council can regulate any of these uses in time, place, and manner. The state will allow medical dispensaries to sell recreational marijuana until the end of 2016, at which point recreational facilities are expected to be up and running and medical facilities will go back to being dispensaries. The Council could also choose to rescind the ban on dispensaries but not adopt an ordinance banning recreational facilities.

Option C: Amend the Albany Municipal Code (AMC) to remove the Industrial zone exception, thereby requiring facilities to be located at least 300 feet from any residential zoning, and/or further define residential zoning, define how property lines are measured, and/or regulate time, place, and manner. Uses would have to meet the criteria of the zone which could further restrict some uses in some zones. The Council could choose to regulate hours of operation, odor, noise, background checks, security, signs, inspection, and more. Under this option, the City would share in the early sales tax revenue and could choose to put the 3% tax on the November 2016 ballot.

Brief discussion followed and staff provided additional information about where uses could be located currently and potentially under this option. Kidd noted that the Oregon Liquor Control Commission (OLCC) will review applications according to the state rules. City regulations, including Sign Code, would not trump state law. Some cities have adopted the state rules into their development code or municipal code.

Option D: Adopt a ban on recreational facilities (or other uses) and do not rescind the ban on medical dispensaries selling recreational marijuana. This option would result in no recreational marijuana sales anywhere in the City prior to the November 2016 election. OLCC has said it will not process applications in cities or counties that have adopted a ban until the vote. The Council would want to begin working on time, place, and manner restrictions in case the ban is voted down. Under this option, the City would not be able to share in the tax revenue generated from early sales. The preliminary interpretation from the League of Oregon Cities (LOC) is that once the ban is placed, a City would be unable to receive the tax revenue even if they later rescind the ban.

Option E: Refer the question to the voters in November 2016 and not adopt a ban now. Under this option, sales would likely not occur in Albany prior to the late summer or early fall 2016. The City would share in tax revenue from early sales until and unless the ban was passed by the voters. The Council would want to consider time, place, and manner regulations immediately as the City would be receiving requests from OLCC regarding land use and zoning compliance for incoming applications. If voters reject the ban, all marijuana businesses would be required to cease operations with the exception of any medical dispensary or producer already licensed. People who spend money to make improvements for recreational sales would do so at their own risk and those businesses would not be

grandfathered in if voters approve the ban. There is risk of the City being sued; however, the chances of success by a negatively impacted facility is low.

Kidd said the City Attorney's Office doesn't have an opinion on the morality of marijuana. In his opinion, Option E has a lot of unanswered questions that could put the City in an awkward predicament. As the bill is being interpreted by most attorneys, there must be a ban in place in order for it to go to the voters in 2016. The LOC also has expressed concern about giving people of the City a second vote on an issue already voted on by the state. If the Council is interested in pursuing Option E, staff would need to look into it further with the state. Brief discussion followed.

#### BUSINESS FROM THE PUBLIC

Michael Parten, from West Coast Alternative Medicine, said the option to rescind the ban on medical facilities selling recreational marijuana and then move to a vote to ban recreational facilities would provide a few months of a track record for recreational sales and how much tax revenue would be generated for our City. Establishing a ban right away would cut the City out of that tax revenue.

Casey Costa, P.O. Box 1305, said she has been watching both sides of the disagreement of whether to have recreational sales. One side is determined not to have recreational marijuana sales in Albany despite the fact that it is now legal, and the other side is determined to have recreational marijuana in Albany without knowing the full impacts. What each side doesn't seem to appreciate is the additional commerce that recreational marijuana would bring to Albany. While the City Council has said tax revenue would be negligible, that is an unknown at this time. There is a unique situation of having a substance that is widely available illegally and tax free, and the public stating that they want to buy it legally and pay tax. She asked that the City Council realize that recreational marijuana is in Albany and has been for a long time, and that they encourage commerce and start the sale of legal recreational marijuana as soon as possible.

Trey Mork, 2614 Prairie Place, asked for clarification on an earlier statement, and Kidd explained that as it now stands, the City would not be able to receive tax revenue if they enacted a ban that the voters later rescinded; however, he expects that to be changed by the legislature going forward.

Rhonda McNeal, 687 Tangent Street, Lebanon, reviewed her personal history and her efforts to get off of disability insurance, renew her independence, and all that comes with holding a paycheck. She is having trouble finding a job because of the laws on THC, and her only real hope of employment is in the green community which has been accepting and nonjudgmental. She asked that consideration be given to lifting the ban to help people like her who are trying to get off of assistance.

Steven Reynolds, P O Box 1420, said he owns property in the Light Industrial zone and he is concerned about private property rights and what he would be losing if these uses are grandfathered in. His perspective is that this is still illegal under federal law and the government could decide to enforce federal laws next year. The laws may change in the future and marijuana might be treated like alcohol or wine grapes; however, at this point, people who don't want to be involved until it becomes legal are being pushed to the side. These property rights have value to him.

Sher Fenn, 2601 Salem Avenue SE, said the current ban has negatively affected medical marijuana sales in Albany, which has affected her family members who are employed in that business. She noted that people who go to Corvallis to buy marijuana are also shopping and eating there, so Albany is losing revenues in other ways as well. She asked that Council think about how the ban is hurting businesses.

#### BUSINESS FROM THE COUNCIL

Councilor Ray Kopczynski asked if the maps could be refined to show where retail shops could potentially locate. Konopa noted that staff has provided a lot of information and she suggested that it would be appropriate to have Council consensus on whether additional information is needed. City Manager Wes Hare said that retail sales would most likely be located in Community Commercial and Regional Commercial zones. City Attorney Jim Delapoer added that, although the discussion has been focused on recreational sales, there could also be processing and distribution which might occur in Industrial zones.

Councilor Rich Kellum said he would like to adopt Option D and begin working to ensure regulations would be in place if the ban isn't passed by the voters. Delapoer said the usual process would be to direct staff to draft an ordinance.

**MOTION:** Kellum moved to have staff to bring back an ordinance based on Option D of the Local Options Regarding Marijuana Regulations. Councilor Bessie Johnson seconded.

In response to a question from Johnson, Kidd clarified that if a ban is put on the November 2016 ballot, the state would not begin to process applications until after that date.

Councilor Bill Coburn asked if it is Kellum's understanding that if the ban does not pass and recreational sales begin, Albany would not get any tax revenue. Kellum said the tax revenue can only be used for the regulation of marijuana. He said many other jurisdictions have banned commercial recreational marijuana activities and he can't imagine that

legislators won't change that provision in the future. Kidd agreed, noting he has already seen signs of that change.

Konopa said there are a lot of details that are yet to be worked out at the state level and she fully expects that the tax revenue limiting provision will be changed.

Kopczynski said the City of Albany has already voted to legalize recreational marijuana and he takes exception to asking them to vote again. Kellum said he doesn't think people understood the amount of tax revenue that would be received and limitations on its use. Konopa said additional information has come out and going to a vote would give people the ability to make a decision based on what is in place. Kopczynski questioned what information has come out that would materially change how things would happen in Albany. Konopa said she has seen information that the black market is growing because they can sell it cheaper; she thinks this option will provide time to see if the black market will grow or decline. Councilor Dick Olsen said that marijuana is Oregon's biggest cash crop and he thinks that allowing recreational sales would help to curb the black market element. Kopczynski said we have been talking about this for a long time and he feels that some on Council are on the wrong side of history. Kellum noted that the ban would not keep anyone from personal use. Additional discussion and deliberations followed.

VOTE: A vote was taken on the motion and it passed 4-3 with Olsen, Kopczynski, and Coburn voting no.

The requested ordinance will come back for a first reading on December 2, 2015.

MOTION: Olsen moved to have staff bring back an ordinance with the 3% tax. The motion died for lack of a seconder.

Kidd noted that the 3% tax issue could be decided anytime between now and next November.

#### ADJOURNMENT

There being no other business, the meeting was adjourned at 8:58 p.m.

Respectfully submitted,

Reviewed by,

Teresa Nix  
Administrative Assistant

Wes Hare  
City Manager