

CITY OF ALBANY  
CITY COUNCIL  
Council Chambers  
Wednesday, July 27, 2016  
7:15 p.m.

MINUTES

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE TO THE FLAG

Konopa led the pledge of allegiance to the flag.

ROLL CALL

Councilors present: Mayor Sharon Konopa and Councilors Rich Kellum, Bill Coburn, Bessie Johnson, Ray Kopczynski, Dick Olsen, and Floyd Collins.

Councilors absent: None.

SCHEDULED BUSINESS

Communication

Accepting Wendy Ezell's resignation from the Planning Commission.

MOTION: Councilor Bessie Johnson moved to accept Ezell's resignation. Councilor Ray Kopczynski seconded the motion, which passed 6-0.

Business from the Public

Konopa said that tonight's actions on the marijuana agenda items are just to refer the questions to the voters.

Tré Mork, 2614 Prairie Place, Albany, read a letter (see agenda file) discussing marijuana dispensaries. He said dispensaries employ citizens and lower unemployment. The Council has allowed growth by letting Lowe's and WinCo locate in the City, but is trying to restrict or ban marijuana's small business owners. They won't stand for it any longer. If the Council overly restricts their businesses, they will take legal action against the Council.

Ray Hilts, 2748 Foxglove Loop SE, in Mennonite Village, said he used to live at 38<sup>th</sup> Avenue and Takena Street. At that time, the street was slurried, so it stayed nice and clean and didn't need reconstruction. Water Street and other streets are deteriorating. He has researched what a 5-cent gas tax could do for our streets. A little over a million dollars would not fix everything in one year, but it would over a period of years. He asked the Council to put a five-cent tax for street repair to the vote of the people.

Konopa said the Council wanted to put a gas tax to the voters at the same time as Corvallis, but Corvallis is not ready. Hilts doesn't think that is important. The price of gas in Corvallis is higher than in Albany.

Rhea Graham, owner of Canna Kitchen, who lives at 1440 Lawnridge Street SW, said that medicine is not taxed in Oregon, so medical marijuana would not offer tax money. Tonight's agenda includes renewal of several liquor licenses but the Council won't let marijuana businesses in. The OLCC is putting 10 more liquor stores in each of Linn, Benton, and Lane Counties. She hopes the Council will fight as hard in opposition to the liquor stores as they do in opposition to recreational marijuana. She hopes that on the ballot, a "no" vote will mean not to allow the sale of marijuana.

Cindy Etzel, 15241 Skelton Road, Jefferson, said she owns a business in Albany at 820 SE Pacific Boulevard. She read a document (see agenda file) regarding marijuana. She said using marijuana is the same as using wine. The voters voted twice to allow recreational marijuana, but the Council continues to find ways to restrict it. She read the City's Mission and Vision statement and related it to marijuana discussion. She asked why the Council is manipulating and enforcing puritan rules. Yes should mean yes and no should mean no. She said, make the measure so clear that a seven-year-old could comprehend it.

Reconsideration of Ordinance

Amending Albany Municipal Code 2.04.060 concerning voting abstentions at City Council meetings and declaring an emergency.

City Attorney Jim Delapoer pointed out that the Ordinance in the agenda packet contains corrected scrivener's errors.

Konopa said the Ordinance had a first reading on December 7, 2015, and a second reading on January 13, 2016, but no action was taken at that time. Tonight's action is a reconsideration of the ordinance.

Kopczynski said the opportunity for abstention is in the Charter for a reason. It's a valid tool that is used nationwide, even in the federal congress. There is no reason to change it. The action is disingenuous because the Council is doing what they did with Measure 91 by removing the will of the voters. He is not in favor of changing the ground rules. Councilor Dick Olsen agreed.

Konopa said this is not just about this particular issue. It has set a precedent for this type of action, with one Councilor holding up a decision of the Council. Discussion followed about the Charter and the Albany Municipal Code (AMC). Delapoer explained the rule. The Charter provides for the Council to adopt rules for conducting its business. The Council has a rule in an ordinance that silence equals a "yes" vote, but if a Councilor states that he or she is abstaining, then the abstention is not counted. Delapoer said, how you classify the effect of an abstention is not in the Charter; it is in the ordinances of the AMC. The Council can change the rule, and it would not be a change to the Charter.

Councilor Rich Kellum said, if you have four people on the Council who want to do something and a person who is opposed would have voted no, but instead just keeps the majority from making a decision, that's a problem. We aren't here to play games or win at any cost. We win some and we lose some, but we should get along with each other in the process.

MOTION: Kellum moved to adopt the ordinance regarding abstentions and Councilor Floyd Collins seconded the motion.

Kopczynski said his job is to do the best thing for the entire community. Abstention is a tool to make the City Council rethink problems and maybe find better solutions. It's a tool that is used nationally. He sees no problem with keeping it the way it is. This amendment would kill something that hasn't happened yet for fear that it might be used.

Konopa said, we may not agree, but it isn't fair for a minority to hold up the majority. Kopczynski said that is what happened when the Council passed the recreational marijuana ban over the will of the voters. Discussion followed.

Councilor Bill Coburn said he is struggling with the issue. The current process is that when an issue comes up, you vote, and you win or you lose. The process is not to try to find a way to obstruct the process. This is the kind of thing that goes on in Washington, D.C. that people are so tired of. He said, call it what you want, but the point is, the intent should not be to obstruct the process. A suggestion in one discussion was to allow the Mayor to vote on every issue; he thinks that would be a better system.

Konopa said that this rule was put into place by a previous Council. No matter what they decide tonight, a future Council can change it whenever they wish. Making the change tonight would at least get this Council through the marijuana time, place, and manner issues.

Olsen said one reason the Mayor votes only to break a tie is so that a minority Mayor doesn't get overridden repeatedly. He thinks there's an advantage to being able to block an unfortunate motion or ordinance. He thinks what he and Kopczynski have been doing is similar to the Mayor's ability to veto an ordinance. He wants to keep this ordinance intact.

VOTE: A vote was taken on the motion and it passed 4-1, with Kopczynski voting no and Olsen abstaining. The motion was designated Ordinance No. 5872.

#### Second Reading of Ordinance

Imposing a three percent tax on the sale of marijuana items by a marijuana retailer and referring ordinance.

The ordinance was read for the first time in title only on July 25, 2016.

Delapoer said this is not a fee but a tax, so no public hearing is required. In the interest of the public process, he suggested that the Mayor allow another opportunity to comment for anyone else who wishes to. To the audience, he said that the purpose of the ordinance is to send to the voters the question of whether the Council's ban on recreational marijuana should be continued, and to impose a tax on recreational marijuana if the voters choose to overturn the ban.

Konopa called for public comment on the question of the tax.

Graham asked what the Council plans to do with the tax money. Konopa said the Council will consider what to do with the tax money if the ban is overturned by the voters.

Delapoer reminded everyone that the public comment is not for the public to question the Council, but to comment.

Mork said he hopes the Council puts the issue on the ballot.

Delapoer read the ordinance for the second time in title only: AN ORDINANCE OF THE CITY OF ALBANY IMPOSING A THREE PERCENT TAX ON THE SALE OF MARIJUANA ITEMS BY A MARIJUANA RETAILER AND REFERRING ORDINANCE.

MOTION: Johnson moved to adopt the ordinance. Kellum seconded the motion, which passed 6-0 and was designated Ordinance No. 5873.

#### Adoption of Resolutions

Approving referral to the electors of the city of Albany the question of imposing a tax on the sale of marijuana items by a marijuana retailer within the city.

MOTION: Collins moved to adopt the resolution. Kellum seconded the motion, which passed 6-0 and was designated Resolution No. 6527.

Approving referral to the electors of the city of Albany the question of banning recreational marijuana producers, recreational marijuana processors, recreational marijuana wholesalers, and recreational marijuana retailers within the city.

MOTION: Collins moved to adopt the resolution and Kellum seconded the motion.

Kopczynski said regardless of tonight's comments, he thinks the ballot question is straightforward. It says, "shall the City of Albany prohibit . . ." Olsen said he thinks it would be better if it was rewritten for a yes for approval. City Attorney Sean Kidd said it is written in the negative because the League of Oregon Cities (LOC) advised that cities and counties not put a question on the ballot to allow something that is still illegal under federal law. Kidd said a lot of other local cities and counties are voting on this same issue.

Delapoer said a Council could impose a ban if the voters in the community did not pass the legalization by at least 55% of the vote. Discussion followed.

Johnson said she doesn't like the wording that makes a yes vote mean no.

VOTE: A vote was taken on the motion to adopt the resolution and it passed 6-0, and was designated Resolution No. 6528.

#### Adoption of Consent Calendar

- 1) Approval of Minutes
  - a) May 23, 2016, Work Session minutes.
  - b) May 25, 2016, Regular Session minutes.
  - c) June 6, 2016, Work Session minutes.
  - d) June 8, 2016, Regular Session minutes.
- 2) Annual liquor license renewals.

MOTION: Kopczynski moved to adopt the Consent Calendar as presented. Johnson seconded the motion, and it passed 6-0.

#### Award of Contract

Professional services agreement for Albany Municipal Airport projects.

Public Works Engineering and Community Development Director Jeff Blaine said the City is required by the FAA to go through this process. The City has gone through the process once already. The successful bidder this time is the same consultant the City has used in the past.

Collins asked if there were other responders. Blaine said there was one other. It's a qualification-based selection process. Both responders were qualified. Collins explained that when using the qualification-based process, which the state requires, we don't get the price until we negotiate with the best-qualified responder. The LOC is trying to get that law overturned.

MOTION: Collins moved to award the professional services agreement for Albany Airport Projects to Precision Approach Engineering. Kopczynski seconded the motion, and it passed 6-0.

#### Report

Marijuana time, place, and manner regulations.

Kidd referred to the draft ordinance on the dais (see agenda file). At the last Work Session, Council asked for a map to mirror Map 3. This does that. The ordinance limits all recreational uses of marijuana. It removes the industrial exceptions, and redefines the measurement of 300 feet is from property boundary to property boundary.

He asked the Council if they would like staff to come back with an ordinance that also includes medical marijuana. Staff was confused about whether that was requested by the Council, so Kidd did not put it in this ordinance.

Kopczynski passed out a two-page document (see agenda file). He asked, what is wrong with Map 2? Why do we need to remove the industrial exception, and why is 300 feet important? Why not less? He said, some marijuana-related operations have more security than recreational retailers, and no public access. Konopa said the 300-foot limit has been in the Code for years for adult entertainment businesses. Kopczynski said they are two radically different industries. Kellum said the discussion could be about 300 feet versus a thousand feet; he doesn't think a thousand feet is necessary, but it's just as reasonable as 200. He wants to go the extra mile to protect kids. The District Attorney's office says that driving under the influence of alcohol is down but driving under the influence of marijuana has increased. Minors in possession of marijuana is also way up. Marijuana is having an effect.

Kopczynski asked Albany Police Captain Jeff Hinrichs, who was in the audience, to address the statistics Kellum cited. Hinrichs said he doesn't have statistics with him, so he can only speak anecdotally. The police have seen a small rise in marijuana-involved incidents. He said Kellum's comment that there has been an increase is accurate. There may have been 100 incidents total in the City of Albany. Konopa said the Benton County Sheriff told her that they have had a big rise in marijuana driving under the influence. Kellum said his information came from Tori Lynn, the Director of Linn County Juvenile Department.

Kopczynski asked how the 300-foot limit could be enforced, if anyone can grow marijuana in their back yard. He suggested using 250 instead of 300, especially for wholesalers, growers, and producers, and keeping the industrial zone exemption. He thinks the Council is intentionally trying to reduce properties available for marijuana uses to such a small number, that they are in effect using the Code to stifle recreational sales in the city.

Konopa suggested that the Council try 300 feet and if it doesn't work, it can be changed later. Some voters who are against marijuana might vote for it if there are time, place, and manner regulations in place. Regulating zoning is looking out for property values. Discussion followed about the purpose of zoning.

Kopczynski asked the City Attorney how restrictive the Council can be before it becomes unreasonable. Delapoer said that until the courts give us guidelines, we really don't know. He said that if the effect of the restrictions was to preclude recreational sales and the ban was lifted by the voters, he thinks the regulations would be difficult to defend. The Council has to judge for themselves whether or not they are precluding recreational sales.

Kopczynski said he thinks the three options in question all cross the line. He is concerned that the Council seems to be stuck on just these three options. He would like to have staff come up with a similar proposed ordinance for Option 2, leaving the industrial exemption and changing the distance to 250 feet.

Coburn asked the City Attorney what the ordinance does with the industrial exception. Kidd said Map 3 removes the industrial exception. Coburn said, so if we favored Map 2, we would need to add back the industrial exception. Kidd said he believes Map 2 mirrors the current Albany Development Code.

Planning Manager Bob Richardson said Map 2 was focused on dispensaries and recreational sales and not on all marijuana uses.

Delapoer said if the Council decreases the distance requirement or keeps the industrial exemption, there will be more possible sales locations. The Council doesn't have to do both.

Johnson said she is concerned that limiting locations will result in marijuana uses being concentrated in one area. She thinks the Council needs to be careful about restrictions.

The Council discussed scheduling the next discussion of the time, place, and manner issue. This item will come back to a future meeting.

City Manager Pro tem Jorge Salinas said staff is struggling to come up with information because it is not clear what the Council wants. It's a moving target. Delapoer suggested that the Council not try to draft ordinance language, but talk to each other (fewer than four at a time) and come up with ideas. Staff could use ideas that seemed to have at least four supporters to draft an ordinance and make a map. Konopa said seeing the Council's ideas in ordinance form tonight helped the discussion.

Kopczynski referenced item no. 7 on his handout, regarding edibles. He suggested that banning advertisement of edibles and flavors that would be attractive to minors would help to protect kids. He also mentioned item no. 6, regarding visibility, suggesting exempting marijuana producers and labs from the time, place, and manner restrictions. These types of businesses are not open to the public and won't be advertising.

Blaine suggested that the City needs to be careful not to appear to mislead. There are two separate sections in the AMC, one for recreational sales and one for medical sales. This ordinance only applies to recreational sales. If

the Council wants to have ordinance language for medical marijuana, they need to direct staff to include it. He is concerned specifically about the possibility of measuring 300 feet differently for medical and recreational facilities.

Kidd explained the difference in the way the 300 feet would be measured. Current Code for medical marijuana says that the 300 feet is measured to the zone. Tonight's ordinance applies to recreational marijuana and proposes measuring 300 feet between property lines. Including medical marijuana in this ordinance would be a drastic change.

Blaine said staff needs clear direction whether the requested language is to apply to medical marijuana uses, or only to recreational.

The Council indicated agreement that they do not want staff to add medical uses to this ordinance.

Blaine said staff created some maps showing the effect of the ordinance on recreational uses and the effect if it was also applied to medical. He handed out the maps (see agenda file).

Richardson said there are lots of nuances and generalizations in the maps. In making the maps, staff looked at various zones, and asked, if someone wanted to grow something, where could they do that? Both residential and industrial zones allow agricultural uses. Most commercial zones allow retail sales and services, which includes plant nurseries. The same method was used for processing and wholesale.

Konopa asked, what about odor? Richardson said the state has odor regulations in place. He suggested that the Council think about what particular impacts concern them, and staff can look at what the state regulations say.

Delapoer reminded the Council that place is in the zoning and manner is an overlay, like the Council's regulations on pawn shops and second-hand dealers. If the Council would tell staff what values they want to protect, it would help. So far, the Council has only given staff direction on proximity, in hopes that it would provide protection for other values.

Collins said he would like to see what the state regulations are. Staff will provide copies of the state regulations.

#### BUSINESS FROM THE COUNCIL

Olsen said he heard a news item on public broadcasting about the Council's struggles with marijuana, and thinks it's strange that we are about the only people doing a puritanical prohibition. Konopa said there are more cities statewide that do not allow recreational marijuana than there are that do allow it. Kopczynski said Olsen was alluding to an NPR interview with himself (Kopczynski) and Konopa. He will provide the link to the interview to the other Councilors.

Collins said he and Olsen received an email from an elderly woman in their Ward. She is on a fixed income, but earns too much to be eligible for water and sewer subsidies. He is not sure how recently we have updated the threshold to qualify, and wants the Council to look at it again. As we continue to raise rates, if people's fixed income isn't rising as fast as the rates, then our threshold may need to change. Blaine said a 35-cent surcharge funds the subsidy. The City is only spending about 50% of that revenue on the subsidy, but it would be nice to offer the program to more residents. There isn't a good way to estimate what percentage to raise it to in order to come out even. Konopa would like to see it reviewed and come back to Council.

Collins said he will not be here for the August 1, 2016, City Council Work Session.

Konopa said that in order to have a gas tax on the November ballot, the City would have to have an ordinance adopted by August 10, 2016. Kellum said, if Corvallis is not putting a gas tax on the ballot, then Albany gas retailers would lose business. It's a good idea to do it at the same time.

Olsen said he agrees with Kellum.

Salinas informed the Council that staff is working on a plan to do lead testing in City facilities including City Hall, the two libraries, Maple Lawn Preschool, and the Senior Center.

Collins said for clarification that all lead testing is facility based. The water in the City mains does not exceed the action level. There is no threat from the city water supply. Blaine said the testing is proactive. There is no reason to believe any threat exists. Blaine explained that Public Works carefully controls the pH of the City's water, which reduces the potential for the water to pull lead out of fixtures. Discussion followed.

Blaine presented a draft letter (see agenda file) for the Mayor's signature. The DEQ has released the stormwater permit for public comment. Staff will likely submit several hundred comments, as they did on the last draft. The letter comments on the big-picture items and will be submitted with the staff comments. He asked the Council to authorize the Mayor to sign the letter.

Albany City Council Regular Session  
July 27, 2016

MOTION: Collins moved to authorize the Mayor to sign the letter addressed to the Hearings Officer for the Oregon Department Environmental Quality regarding the Phase Two MS4 stormwater permit. Kopczynski seconded the motion, which passed 6-0.

NEXT MEETING DATE: Work Sessions on Monday, August 1, 2016, and Monday, August 8, 2016; and a Regular Session on Wednesday, August 10, 2016.

ADJOURNMENT

There being no other business, the meeting was adjourned at 9:13 p.m.

Respectfully submitted,

Reviewed by,

Mary A. Dibble, MMC  
City Clerk

Jorge Salinas  
Assistant City Manager/Chief Information Officer