

CITY OF WILSONVILLE

CITY COUNCIL MEETING MINUTES

A regular meeting of the Wilsonville City Council was held at the Wilsonville City Hall beginning at 7:00 p.m. on Monday, September 15, 2014. Mayor Knapp called the meeting to order at 7:00 p.m., followed by roll call and the Pledge of Allegiance.

The following City Council members were present:

Mayor Knapp
Council President Starr - excused
Councilor Goddard
Councilor Fitzgerald
Councilor Stevens

Staff present included:

Bryan Cosgrove, City Manager
Mike Kohlhoff, City Attorney
Sandra King, City Recorder
Zach Weigel, Engineering
Kerry Rappold, Natural Resources Manager
Mark Ottenad, Government Affairs Director
Jon Gail, Community Relations Coordinator
Chris Neamtzu, Planning Director

Motion to approve the order of the agenda.

Motion: Councilor Fitzgerald moved to approve the order of the amended agenda. Councilor Stevens seconded the motion.

Vote: Motion carried 4-0.

MAYOR'S BUSINESS

The Mayor announced the date for the next Council meeting. He reported the Ad Hoc Mayor's Committee endorsed the top five legislative priorities resulting from the League of Oregon Cities state-wide survey; and that he participated in a meeting with Greater Portland Inc.

COMMUNICATIONS

- A. PGE Green Power Challenge, Annette Mattson, PGE Government Affairs.
This item will be rescheduled for 2015.

CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

This is an opportunity for visitors to address the City Council on items *not* on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter. Please limit your comments to three minutes.

Theonie Gilmore, Executive Director of Wilsonville Arts and Culture Council, expressed her desire to see children's art programs become a part of the Parks and Recreation Department

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offerings. She was concerned the Culture and Arts Alliance has dissolved due to a lack of volunteers.

Peter Deklaver, a local photographer and videographer presented a video he shot in Wilsonville which displayed the beauty in the area and noted he has worked with Ms. Gilmore on the Arts Festival event and found it rewarding.

Mr. Cosgrove pointed out the new Parks and Recreation Director will be working on a strategic plan for his department. One area that will be reviewed is what the City does for arts in the community.

COUNCILOR COMMENTS, LIAISON REPORTS & MEETING ANNOUNCEMENTS

Councilor Goddard – (*Library Board Liaison*) reported on upcoming community events including the Antique Appraisal Day and the Harvest Festival at the Stein Boozier Barn at Murase Plaza. He announced the date of the next Library Board meeting.

Councilor Fitzgerald – (*Development Review Panels A & B Liaison*) announced the results of the last DRB Panel A meeting and the next meeting dates for both panels. She invited the community to attend the Spa Saturday fundraiser whose proceeds will go to the Senior Nutrition Program. The Councilor announced the Willamette Water Supply open house set for October 28th.

Councilor Stevens – (*Planning Commission; CCI; Wilsonville Seniors Liaison*) noted the next meeting date of the Planning Commission. She invited the public to attend the Frog Pond Area meetings and open house. The Wilsonville Community Seniors met to discuss additional fundraising efforts to help seniors and Center activities. The Wilsonville Quilters Group applied for an opportunity grant which would allow them to sew 24 quilts they will donate to local area hospitals. Councilor Stevens announced the Charbonneau Arts Festival beginning October 25. All proceeds of the Art Festival will go towards the Art Programs at Wilsonville and Canby high schools.

Mayor Knapp announced the upcoming Urban Renewal Task Force meeting set for September 23rd. In addition the Aquatic Task Force will meet at 5 pm on the same date.

CONTINUING BUSINESS

Mr. Kohlhoff read Ordinance No. 747 into the record by title only on second reading.

A. **Ordinance No. 747** – 2nd Reading

An Ordinance Of The City Of Wilsonville Adopting The City Of Wilsonville Public Works Standards – 2014 To Update And Replace Public Work Standards- 2006 And Repealing That Portion Ordinance 610 Adopting Prior Public Works Standards -2006.

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Mr. Rappold stated in response to suggestions made during the first reading of the Ordinance, the Impervious Area Threshold Form has been made a detail rather than being imbedded in the document.

Motion: Councilor Stevens moved to approve Ordinance No. 747 on second reading. Councilor Goddard seconded the motion.

Vote: Motion carried 4-0
Councilor Starr - excused
Councilor Goddard - Yes
Councilor Fitzgerald - Yes
Councilor Stevens - Yes
Mayor Knapp - Yes

PUBLIC HEARING

A. **Ordinance No. 748** – 1st Reading

An Ordinance of the City of Wilsonville Establishing a Tax on the Sale of Marijuana and Marijuana-infused Products in the City of Wilsonville and adding a New Wilsonville Municipal Code Section.

Mr. Kohlhoff read Ordinance No. 748 into the record on first reading.

Mayor Knapp opened the public hearing at 7:32 p.m. and read the hearing format. The staff report was presented by Mr. Kohlhoff and is included here in its entirety to provide clarity.

Begin Staff Report.

The Ordinance on this agenda for first reading imposes a gross receipts tax on the sale of medical marijuana, recreational marijuana (should it be legalized by Oregon voters in November) and marijuana-infused products. The Ordinance, which is similar to marijuana taxation ordinances passed by the cities of Hillsboro and Ashland, imposes a lower tax rate on medical marijuana (5%) than that imposed on recreational marijuana (10%). The Ordinance applies to all retailers of marijuana and medical marijuana. The Ordinance allows the seller to retain five percent (5%) of taxes collected to defray the costs of bookkeeping and remittance. The tax would apply to legal and illegal operations. In order for this Ordinance to be timely enacted prior to the November election, the Ordinance must come before Council for a second reading as well. Two readings at one Council meeting are allowed if both pass by a unanimous vote of all Council members.

Oregon voters legalized medical marijuana via initiative petition in 1999. Shortly thereafter, medical marijuana dispensaries began opening around the state. These dispensaries essentially served as a middle-man for marijuana growers and medical marijuana patients. While these dispensaries were at least arguably legal, they were unregulated and the source of controversy in many communities.

The 2013 Oregon Legislature passed House Bill 3460, which created regulatory and licensing

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requirements for medical marijuana dispensaries. To date, there are approximately 198 approved and 115 provisionally approved dispensaries in Oregon. The City of Wilsonville passed Ordinance No. 740, which effectively bans medical marijuana dispensaries in Wilsonville during the legislatively allowed moratorium period, which ends May 1, 2015. Additionally, the City's business license Ordinance remains in effect and prohibits the operation of any business in Wilsonville that by its very nature violates federal law. This Ordinance therefore effectively bans all marijuana businesses from Wilsonville, with no sunset date, as long as sale and possession of marijuana remains illegal under federal law.

Signature-gathering is currently underway for a ballot measure that would legalize the sale of recreational marijuana in Oregon and prohibit local jurisdictions from taxing its sale. This measure is likely to appear on the November ballot. At this point in time, however, there is nothing in current Oregon law that prohibits a local government from taxing marijuana.

The Ordinance presented for Council consideration is a gross receipts tax on the sale of recreational marijuana, medical marijuana and marijuana-infused products. A gross receipts tax is applied to the total gross taxable revenues of a business. It is similar to a sales tax except that it is levied on the seller rather than the purchaser. The seller is responsible for maintaining accurate records of its gross revenues from taxable goods and services and then remitting a percentage to the taxing entity. Many businesses that are subject to a gross receipts tax will show the tax on the bill of sale they present to the customer, but it is nonetheless the business that is responsible for paying the tax.

Staff elected not to recommend a taxation scenario in which growers and processors are also taxed, for a number of reasons. First, under Oregon law, growers and grow sites must register with the state, but their locations and identities are confidential. City staff would have no way of identifying them in order to apply a tax. Further, City staff has no experience with administering a value added tax, which is essentially what this would be, and is reluctant to even attempt to create the administrative structure for such a tax. In addition, all taxes, regardless of where they are assessed in the supply chain, are ultimately passed on to the consumer. Therefore, the gross receipts of a business would reflect all of the costs incurred along the supply chain and a gross receipts tax would capture tax revenue from each of those elements. How to disperse that tax liability within the supply chain would be left to the growers, processors, and retailers, rather than to the City. Finally, the proposed ballot measure specifically prohibits a tax on growers. Thus, if our Ordinance contained a tax on growers, it would be in direct conflict with the enacted law and therefore more subject to challenge under the proposed measure's Section 58, which contains language repealing conflicting charters and ordinances.

As stated above, there is nothing in current Oregon law that prohibits the City from taxing marijuana, but it should be noted that the marijuana initiative most likely to be considered by the voters in November contains the following express language:

“SECTION 42. State has exclusive right to tax marijuana. No county or city of this state shall impose any fee or tax, including occupation taxes, privilege taxes and inspection fees, in connection with the purchase, sale, production, processing, transportation, and delivery of marijuana items.”

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Because the above language does not specifically repeal a local marijuana tax in effect at the time of the measure's passage, and because this language could be interpreted to read "No county or city of this state shall [after the effective date of this measure] impose any fee or tax..." it can be argued that this language would not be in conflict with the ballot measure and that the ballot measure does not preempt this taxation Ordinance, if the Ordinance is adopted by the Council before passage of the ballot measure. Alternatively, the language can be interpreted by the Legislature or Courts as "No county or city of this state shall [be allowed at any time to] impose any fee or tax..." As such, absent adjudication in a state court, there is no guarantee that a local tax imposed prior to passage of this initiative would survive beyond the effective date of the initiative, unless the initiative language is modified by the Legislature or the initiative fails.

Taxing marijuana could limit the number of sellers in the Wilsonville area, with such sellers electing instead to operate in cities without such a tax. On the negative side, taxability has been argued to lead to more black market unlicensed sales and these sellers are harder to catch and tax.

Passage must occur before the November election to give the Ordinance a better chance of being upheld as not being in direct conflict with the ballot measure, should it become law.

The ordinance may add some revenue, but legalization will create additional law enforcement costs, so this is not anticipated to be a large revenue generator. It is anticipated that passage of the ordinance will reduce the number of retail sales of marijuana within the City of Wilsonville.

Council may decide not to impose the tax now, but wait until after the November election allowing the voters to decide.

The second reading will need to occur before October 5, 2014; thought we could have the two readings tonight, but that is not possible with one councilor excused.

End of Staff Report

To meet the timeline Mr. Cosgrove said Ordinance No. 748 was placed on the agenda after the Council received their agenda packet materials. He recommended holding the public hearing and leaving it open to allow for any written comments to be included in the record. Since all Council members were not at the meeting, Council will need to select a special meeting date for the second reading of the Ordinance. Councilors agreed on September 29, 2014 at 5:30 p.m. for their special meeting.

Councilor Stevens wanted to know if the tax could be used to fund law enforcement should Ballot Measure 91 pass. The City Attorney stated any taxes collected would go into the City's General Fund.

Councilor Goddard asked what the purpose of the Ordinance was, and whether the City imposed a privilege tax on businesses that sell alcohol and tobacco products.

Mr. Cosgrove indicated the State imposed taxes on alcohol and tobacco and the City is prevented from imposing such taxes. If a city was trying to make it less attractive to sell marijuana having

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a tax would provide a deterrent to someone from opening a dispensary in Wilsonville. Ordinance No. 748 is a preemptive “place saving” ordinance should Ballot Measure 91 pass in November. Council has the discretion to review or repeal any ordinance adopted.

Mr. Kohlhoff explained the Council will not have the opportunity to pass an ordinance imposing a tax on the sale of marijuana should Ballot Measure 91 pass in November. Such an ordinance cannot be adopted by emergency and would need 30 days after the second reading of the ordinance and adoption to become effective. That is why the second reading needs to be prior to October 6th. The deadline to adopt such a preemptive ordinance is November 4.

Councilor Goddard queried why the City would not look to the Attorney General’s office for guidance on the issue.

Mr. Cosgrove held the City was not acting counter to the Attorney General’s office, City Staff is saying if Council want the right to impose a tax on marijuana dispensaries the Council needs to pass the ordinance prior to the election.

Councilor Goddard questioned the appropriateness of applying a privilege tax on what would be an illegal business and why the City did not wait to let the voters decide. Then look to the Attorney General’s office to provide guidance on what the State’s position is going to be regarding defense of the state law with the Federal government or what cities can or cannot do to limit the transactions within their city limits.

Mr. Cosgrove explained the Council can do what Councilor Goddard spoke of; however, once the November election is completed the City cannot go back and decide to impose a tax.

Mr. Kohlhoff noted the State Attorney General has taken the position the State has the authority to go forward with the marijuana dispensary law; however, that has been called into question under the issue of Federal preemption. If Federal preemption does apply the whole dispensary law would be illegal. Secondly, an employment case is being appealed to the Court of Appeals who held there was Federal preemption and there was no right to use medical marijuana in an employment area. In Southern Oregon the Circuit Court upheld against the State of Oregon under the Federal Substance Abuse Act the city’s ability to disallow medical marijuana dispensaries. There is the dueling law and how it is being enforced which clouds the issue; however, Ordinance No. 748 is being provided as an alternative to have the authority to impose the tax.

Councilor Fitzgerald clarified once Ballot Measure 91 passes, Section 42 of the Ballot Measure declares that only the state has the right to tax marijuana. It would be the same taxing situation as alcohol and tobacco wherein the city would not be able to impose a Wilsonville tax on those two products. But, at the moment the city is not preempted from imposing a city tax on marijuana. The Councilor noted marijuana is still a federally controlled substance and to change that status would need an act of congress; because of that fact the banking system is still not authorized to accept cash from dispensaries.

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Mr. Cosgrove thought Colorado, the frontrunner on the matter, has found a way to accept cash from marijuana dispensaries and still meet the federal regulations. He would provide additional information to the Council on that side of the topic.

Mayor Knapp invited public testimony.

Peter Deklaver, 8550 Ash Meadows Road, thought there are pros and cons to marijuana use, and the tax would discourage the sale of marijuana in the City. He wanted to know how the ordinance could be repealed or whether a sunset clause could be added should Measure 91 not pass.

Staff advised if the Measure did not pass this time it most likely would in two years, and cities would find themselves in the same position. It would take a simple ordinance to repeal Ordinance No. 748 should a future Council want to do so.

Mayor Knapp closed the public hearing at 8 p.m.

Motion: Councilor Fitzgerald moved to approve Ordinance No. 748 on first reading. Councilor Stevens seconded the motion.

Councilor Fitzgerald moved the ordinance because she thought it was a good option to have available and provides an option on the way marijuana is being managed in the state. There are a lot of unknowns, and this ordinance allows the option of imposing the tax if necessary.

Councilor Stevens agreed it is an opportunity and option; whatever the Council wants to do afterwards can be decided later.

Councilor Goddard took the position that rather than imposing a privilege tax on legal businesses for the purpose of shifting that business to another community, the Council should let voters decide in November. If the law does not provide sufficient guidance to cities then they should look to the Attorney General's office for legal direction.

Mayor Knapp stated the Mayors' Ad Hoc group discussed the issue and ordinances were being adopted in Hillsboro, Gresham, Tigard and Tualatin. He suggested in the absence of taking an action in Wilsonville those other cities will be shifting those businesses from their jurisdictions into Wilsonville. The Mayor heard Gresham may be considering enacting an ordinance with a zero percent tax rate because they have the option to modify an existing ordinance at a later date. Other cities are considering a one hundred percent tax as a discouragement to anyone who wanted to sell in their city. The question is whether the City can maintain autonomy to make decisions after the scenarios become clear. The League of Cities argues that under Home Rule Charter cities have a right to prohibit medical marijuana dispensaries even if Measure 91 passes; however, this is not a certainty. There is a valid argument that imposing a tax mitigates future costs of setting up licensing, inspection and enforcement programs. The Mayor asked if there would be home based businesses should the Measure become legal.

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Mr. Cosgrove said there are requirements placed on home occupations to mitigate the impact on surrounding residences. Staff is reviewing the City's zoning regulations to locate dispensaries in reasonable places.

Staff stated in states where marijuana is legal, those states set up regulations on where those products can be sold, similar to the OLCC licensing. In addition to reasonable zoning regulations there are reasonable nuisance regulations.

Mr. Cosgrove indicated the public hearing should remain open to receive public comment at the special Council meeting of September 29, 2014.

Mr. Kohlhoff suggested adding to the motion on first reading the phrase "to leave the record open to continue to receive public comment and written testimony until the meeting of September 29, 2014 at 5:30 p.m."

Amended Motion: Councilor Fitzgerald amended her motion to reflect the suggestion of the City Manager to keep the record open and receive public testimony for further comments until the meeting on September 29th at 5:30 p.m. Councilor Stevens agreed with the amendment.

Vote: Motion carried 4-0

A special meeting for the second reading of Ordinance No. 748 has been set for September 29 at 5:30 p.m.

CITY MANAGER'S BUSINESS

Mr. Cosgrove invited Justin Carpenter from Scout Troop 194, to talk about his progress to becoming an Eagle Scout. Mr. Carpenter stated attending a Council meeting was one requirement for receiving the Communications Badge.

LEGAL BUSINESS - There was no report.

ADJOURN

Mayor Knapp adjourned the Council meeting at 8:16 p.m.

Respectfully submitted,

Sandra C. King, MMC, City Recorder

ATTEST:

Tim Knapp, Mayor