

CITY OF WILSONVILLE CITY COUNCIL MEETING MINUTES

A special meeting of the Wilsonville City Council was held at the Wilsonville City Hall beginning at 7:00 p.m. on Thursday, January 23, 2014. Mayor Knapp called the meeting to order at 7:08 p.m., followed by roll call and the Pledge of Allegiance.

The following City Council members were present:

Mayor Knapp
Council President Starr
Councilor Goddard
Councilor Fitzgerald
Councilor Stevens

Staff present included:

Bryan Cosgrove, City Manager
Jeanna Troha, Assistant City Manager
Mike Kohlhoff, City Attorney
Sandra King, City Recorder
Mark Ottenad, Government Affairs Director
Nancy Kraushaar, Community Development Director

Motion to approve the order of the agenda.

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

Vote: Motion carried 5-0.

MAYOR'S BUSINESS

Upcoming meetings were announced by the Mayor. He noted he participated in a discussion at MPAC on Climate Smart Communities. Wilsonville has an advantage because of the SMART bus system which helps to reduce vehicle emissions and trips.

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.

Tim Goodman, COMCAST Government Affairs Office, 9605 SW Nimbus Ave, Beaverton. Mr. Goodman introduced himself as the new Comcast representative for Wilsonville.

Ben Altman, 29515 SW Serenity Way, Wilsonville, spoke as a representative of the Chamber of Commerce Hospitality Committee. Mr. Altman distributed a packet of information regarding wayfinding signage with the hope of moving a project forward. Ideas include different types of

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signs for pedestrians, bicyclists, and vehicles due to the different speeds of travel and focal points.

The Chamber is interested in developing a wayfinding signage program to improve the signage throughout the City. Mr. Altman indicated the Chamber had suggested appointing a task force representing a broad base in the community to address the matter and for Council to direct staff to move the idea forward.

Mayor Knapp shared he had reviewed records from 2012 when the new Sign Code was adopted that indicated the need for wayfinding signage and having staff support moving the matter forward; however, that direction was from a different Council and he wanted to know what this Council thought.

Councilor Fitzgerald thought this was a good idea, and that it was relevant to the bike and pedestrian interests, as well as adding to the general economic vitality.

Councilor Goddard agreed there would be a benefit from taking a closer look at it; he wanted to be sensitive with “signage overload” as vehicles leave the freeway, the first light or two from the interchange are already crowded with signs. He suggested involving the Tourism Task Force and see if they wanted to take a closer look at this as far as scope and locations.

Councilor Stevens mentioned tying the project to the Council Goal of branding the City.

Mr. Cosgrove agreed the idea tied into three of the Council Goals. He mentioned the project would require a consultant due to the complexity of the issue, and thought there was funding available.

Councilor Starr agreed with the comments of the Councilors. He liked the idea of identifying different areas of town through signs to help people get to the right vicinity.

Mr. Cosgrove heard a consensus to bring something back, and thought staff could bring a scope of work to the Council the first meeting of March.

COUNCILOR COMMENTS, LIAISON REPORTS & MEETING ANNOUNCEMENTS

Council President Starr – Park & Recreation Advisory Board, Chamber/City Leadership Liaison. He reported the Parks and Recreation Advisory Board discussed the recommendation for the Aquatic Center feasibility study. The Councilor announced the next meeting of the URA Task Force, and that Clackamas County Board of Commissioners will be holding a Town Hall in the Community Center in February.

Councilor Goddard – Library Board, Chamber Board, and Clackamas County Business Alliance Liaison. Councilor Goddard reported he attended the Chamber Board meeting where they discussed tourism roles, and formed a candidate endorsement committee for the May primary.

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Councilor Goddard stated the Library Board continues to work on their strategic plan. The CCBA held their annual state of the cities luncheon and is working towards identifying a slate of candidates to fill the vacant Lake Oswego House seat. He announced the Friends of Trees event.

Councilor Fitzgerald – Planning Commission; Committee for Citizen Involvement; and Library Board Liaison. Councilor Fitzgerald advised the Tourism Task Force heard a report on how to maximize tourism in Wilsonville; the Planning Commission reviewed the Housing Needs Analysis; and she invited the public to attend the upcoming Daddy Daughter Dance.

Councilor Stevens – Development Review Panels A and B; and Wilsonville Seniors Liaison. Councilor Stevens reported on the activities of DRB Panel – A. She announced the Library will be conducting a teen game night, and the Community Center will be hosting “Hit Parade” featuring music from the 1940’s and 50’s.

NEW BUSINESS

A. Resolution No. 2451

A Resolution Of The City Of Wilsonville Authorizing The City Manager To Sign A Franchise Extension Agreement With Comcast, Extending The Term Of The Current Comcast Cable Franchise To January 31, 2015.

Mr. Kohlhoff read Resolution No. 2451 into the record by title only and presented the staff report. The current franchise expires January 31, 2014, and this extension allows time to negotiate a new franchise agreement with Comcast. Some of the items in the agreement that need to be reviewed include: the City tying its public network into Clackamas County’s; what the PEG fees should be; and Federal law requires a citizen survey be conducted. Because of these items it made sense to continue the agreement under the same terms for one year. Mr. Kohlhoff hoped to reach agreement with Comcast under the “informal” agreement process.

Motion: Councilor Starr moved to approve Resolution No. 2451. Councilor Fitzgerald seconded the motion.

Vote: Motion carried 5-0.

PUBLIC HEARING

A. Ordinance No 734 – first reading

An Ordinance Of The City Of Wilsonville Amending Wilsonville Code Chapter 7, Business Licenses, Sections 7.300, 7.320, 7.330, And 7.370.

Mr. Kohlhoff read the title of Ordinance No. 734 into the record on first reading.

Mayor Knapp outlined the public hearing format and opened the public hearing at 7:40 p.m.

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The staff report is included to provide background and reasoning.

Ordinance No. 734 would revise the Business License sections of the Wilsonville Municipal Code (Code Sections 7.300, 7.320, 7.330, and 7.370) pertaining to issuance of licenses to do business within the City of Wilsonville.

Recent passage of an Oregon law allowing for the location of medical marijuana dispensaries in Oregon communities has raised serious concerns among local governments with respect to the impact that a proliferation of such dispensaries could have on the health and safety of the community. There are also some significant ambiguities in the law that causes concern for local governments and law enforcement. In addition, Federal law continues to view such establishments as illegal and in violation of Federal law, although the current United States Attorney has announced a position of only limited enforcement. In addition, we have been advised by our regional office of the Department of Transportation (FTA-Seattle) that federal FTA grants to Wilsonville will not be in jeopardy as a result of passage of this law, should the City issue the business licenses and allow dispensaries to locate within the City in accordance with Oregon law. (Advice is oral as the federal government has elected not to issue any written formal opinions with respect to this conflict of laws issue.)

As a result of the foregoing, several cities have looked at ways to prevent such establishments from locating within their cities. There has been much discussion of this topic through the League of Oregon Cities and the League of Oregon Cities Attorney Association. The approach most often recommended and adopted by Oregon cities thus far has been to restrict the issuance of business licenses to any business whose operation is a clear violation of any state, federal or local law. Another approach being taken is to amend the zoning code to establish narrower regulations and designated areas for locating such facilities within a given city or county.

Because this law goes into effect March 1, 2014, the most viable solution to this issue for Wilsonville and the one viewed as the most likely to be upheld among the local legal community, is to amend the business licensing requirements, as noted above. Fine tuning the zoning code is another viable option to allow for dispensaries but on a more restrictive basis, than is provided by state law. This option would require the City to issue a 120 day planning moratorium (ORS 197.520 (3) (a)) on the issuance of any license or permitting for dispensaries until updated zoning restrictions could be established. Electing to go this route would mean the City would allow medical marijuana dispensaries but their locations would be restricted in accordance with amendments to the City's zoning code, in addition to the restrictions already contained in Oregon law. If the City elects to go this route, the City is required to provide written notice of a moratorium to the Oregon Land Use Board of Appeals (LUBA) at least 45 days before final hearing on the issue. Thus, the final hearing could not occur until after the March 1, 2014 effective date of the law (earliest date of final hearing would be March 17, 2014) and we could have a dispensary move into an area before that date unless the current advise scenario is followed..

If the Code is changed as outlined above, staff will continue to decline to issue a business license to any medical marijuana dispensary because operation of that business is, by its very nature, a violation of current Federal law. This is the position the City has been taking to date. When the new Oregon law allowing for such dispensaries goes into effect on March 1, however, this

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position could lead to legal challenge and Wilsonville, along with other cities that have already adopted or will adopt this full legal compliance language may face legal challenge and such language could be found to be in violation of state law and preempted by state law. The same potential for legal challenge would apply to any additional restrictions that City might elect to impose through its Zoning Code. Although the impetus for the proposed business license Code changes is passage of the marijuana dispensary law, any business that is operating in violation of any other state, federal or local law could be subject to the revised penalties set forth in the proposed Code amendment, which penalties include fines, unlikely but possible jail time, or closure.

End of staff report.

The ordinance was changed slightly from what was included in the Council packet. Mr. Kohlhoff identified the changes made to the draft ordinance which narrowed the scope of what was originally proposed.

- Section 7.300(2) was changed to read: “(2) A person who carries on or engages in a business that is illegal under applicable ~~does not comply with all applicable~~ City, State, and Federal laws is prohibited from being issued a business license.”
- Section 7.330(2)(g) was changed to read: “(g) A signed notarized statement by the applicant, affirming that all of the information provided is true and correct and that the business for which the application is being made is not illegal under any applicable ~~will be in compliance with all applicable~~ state, federal, and local laws. Applications granted under false pretenses where the business being operated is, in fact, an illegal business will be subject to immediate revocation.”
- Section 7.370(3) was revised to read: “(3) Any business operating ~~in violation of state, federal, or local laws, or~~ without a business license, will be subject to an action by the City in Circuit Court to immediately seek injunctive relief to enjoin operation of said business.” ~~Until the violation is fully cured or a business license is applied for and granted by the City.~~ This remedy is nonexclusive and is in addition to all other remedies available at law and in equity for such violation.”

Emails supporting the proposed ordinance were received from David B. Lake, and Mark Friedman, and made part of the record.

Mr. Kohlhoff thought Council may want to consider adding an emergency clause on second reading so the Ordinance was effective when State law goes into effect March 1, 2014.

The Mayor invited public testimony, hearing none he closed the public hearing at 8:49 p.m.

Motion: Councilor Fitzgerald moved to approve Ordinance No. 734 on first reading and directed staff to bring the ordinance back on second reading with an emergency clause. Councilor Starr seconded the motion.

Councilor Fitzgerald said there were so many unknowns on this issue particularly how the banking for the dispensaries would work since they cannot comply with federal law. Councilor Fitzgerald wanted to delay the possible risks involving large amounts of cash until the banking aspect is fleshed out.

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Councilor Stevens did not want to jeopardize the federal grants the City receives for SMART services particularly since the current Administrative indicated they would not act in a punitive manner; however, the Administration will be changing.

Councilor Starr asked if there were regulations on the number of dispensaries allowed, and was there an ability to keep the dispensaries away from schools and day care centers.

Mr. Kohlhoff said the Councilor described an approach under a zoning code; the ordinance before Council prohibits the business. There was a debate in medical history that the THC is not addictive, and it does control pain, but it also can affect the ability to operate a vehicle if enough is taken. The situation is how it is regulated and whether state law sufficiently regulates it to protect a number of different things, including the consumer. As stated in the *New Yorker* article, the matter has not been thoroughly thought through or developed enough so there are unintended consequences that can occur. It does not appear to be in a regulatory position that is ripe to go forward; the federal law is still being enforced and until the federal government takes a position being conservative protects the City and the best interests in the community.

Mayor Knapp thought the policy with regard to medical marijuana is convoluted at this time, and state legislation will likely occur by the end of this year; if that happens this is a short term proposal. He would rather take a modest position and see how other legal entities answer some of these questions.

Vote: Motion carried 5-0.

CITY MANAGER'S BUSINESS – There was no report.

LEGAL BUSINESS – There was no report.

ADJOURN

The Mayor adjourned the Council meeting at 8:08 p.m.

Respectfully submitted,

Sandra C. King, MMC, City Recorder

ATTEST:

Tim Knapp, Mayor