



City of Oregon City

625 Center Street
Oregon City, OR 97045
503-657-0891

Meeting Minutes - Final

City Commission

Dan Holladay, Mayor
Rocky Smith, Jr., Commission President
Brian Shaw, Nancy Ide, Renate Mengelberg

Wednesday, October 5, 2016

7:00 PM

Commission Chambers

REVISED

1. Convene Regular Meeting and Roll Call

Mayor Holladay called the meeting to order at 7:00 PM.

Present: 5 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay, Commissioner Renate Mengelberg and Commissioner Nancy Ide

Staffers: 10 - Tony Konkol, City Attorney William Kabeiseman, City Recorder Kattie Riggs, Police Chief and Public Safety Director James Band, Public Works Director John Lewis, Economic Development Manager Eric Underwood, Pete Walter, Community Development Director Laura Terway, Finance Director Wyatt Parno and Community Services Director Phil Lewis

2. Flag Salute

3. Ceremonies, Proclamations and Presentations

3a. Metro Update - Councilor Carlotta Collette

Carlotta Collette, Metro Councilor, discussed the projects the Metro Council was working on including Regional Snapshots, transportation planning, regional flexible funds process, parks and nature area projects, levy extension on the November ballot, Willamette Falls Legacy Project, regional equity, Convention Center Hotel, and Oregon Zoo improvements.

3b. Clackamas Fire District #1 Ballot Measure Presentation

Mike Corless, Division Chief for Clackamas Fire, gave a presentation on the Fire District ballot measures in the upcoming November election. The vote was to annex the Boring Fire District into Clackamas Fire District #1. Clackamas Fire started a relationship with Boring Fire in 2009 for training and volunteer services. In 2014, they went into contract for full fire protection. Both Fire Boards met multiple times to discuss the annexation issue and decided it was time to put it to a vote of the people. Boring residents had to vote on two of the measures, one for the dissolution of the Boring Fire District and the other for annexing into the Clackamas Fire District. Clackamas Fire District residents would vote on one measure, to approve the annexation of the Boring Fire District area. All three measures had to pass in order for the annexation to take place. If it failed, Clackamas Fire would continue under the same contract with Boring Fire that they had now. The benefits to Boring Fire were increased staffing in the Damascus area and help with administration. The benefits to

Clackamas Fire would be increasing response times in the eastern areas of the district. There were a few projects in the City that would be fire bond projects including rebuilding Station 16, new roof for Station 15, and new fire engine for the South End Fire Station.

4. Citizen Comments

Tom Geil, resident of Oregon City, invited the Commission to be judges at the Scarecrow Contest for the Nightmare on Main Street event on October 22, 2016. He described the activities happening during the event. This was to draw attention to Main Street south of 7th Street. His store had been on the news twice and was on the cover of Oregon City News.

Mayor Holladay suggested creating a graphic map that had buttons showing where all the downtown businesses were located.

William Gifford, resident of Oregon City, announced the Tower Vista Neighborhood Association elected a new chair, vice chair, and treasurer at their meeting last night. The executive committee of the Hillendale Neighborhood Association would be coaching them on how to get their neighborhood association restarted.

Amber Holveck, Executive Director of the Oregon City Chamber of Commerce, said there was a State Representative Forum last night that was well attended. Clackamas Community College's media center recorded the Forum as well. Tomorrow night there would be an Oregon City Commission Candidate Forum. There would also be a presentation on Oregon City Measure 3-514 regarding the limitation of Urban Renewal funds. The Chamber would be hosting an Oregon City Walk next week.

Rita Mills, resident of Oregon City, was concerned about the homeless in Oregon City. There were homeless sleeping on the porch of her church, St. Paul's Episcopal, and her neighbors had called the police regarding homeless in her neighborhood several times. Our Father's Heart had a wonderful reputation for serving homeless people, but they were only open 24 hours per week. It invited homeless to the City and did not do enough to take care of them. There needed to be public toilets for homeless people.

5. Adoption of the Agenda

The agenda was adopted as presented.

Bill Kabeiseman, City Attorney, said an email had been received today regarding marijuana outdoor grows. He thought there was ambiguity in the law and it was up to the Commission to take the risk to be a test case for whether or not they could regulate outdoor grows. Mayor Holladay left the topic on the agenda for further discussion.

6. Public Hearings

6a. First Reading of Ordinance No. 16-1008: Time, Place and Manner Regulations for Marijuana Businesses (Planning File LE-16-0001)

Laura Terway, Community Development Director, said on the November ballot there was a measure asking Oregon City voters if they wanted to have marijuana businesses in the City. In preparation for that, staff had been working on time, place, and manner regulations. There had been open houses, online surveys, and Planning Commission

and City Commission public hearings on this issue.

Pete Walter, Planner, stated these draft regulations were based on extensive public input as well as input from the Oregon Liquor Control Commission, City Attorney, and League of Oregon Cities. A lot of the issues had already been resolved and he was confident the regulations were reasonable, fair, and would protect Oregon City businesses and residents. The final issue that needed to be addressed was whether or not to allow marijuana businesses in the Canemah National Register Historic District. The Canemah Neighborhood Association was in support of prohibiting marijuana businesses in the district. There was public testimony in the record from Karen Blaha from the Canemah Neighborhood Association. Staff recommended approval of the first reading of the Ordinance.

Mayor Holladay opened the public hearing.

Geo Haney III, resident of Oregon City, said the City had been fighting against him to have marijuana industry in the City. He would like to bring the money to the City that he was giving to Multnomah County for his marijuana business.

Karen Blaha, resident of Oregon City, said she was speaking as an individual that night, not for the Canemah Neighborhood Association. She was concerned about marijuana businesses being in dense residential areas and where children lived due to the robberies that came with these businesses. Canemah was a federally designated national historic district and marijuana was a federally prohibited drug. Were marijuana sales federally allowed in national historic districts? Would they be in danger of losing the national historic designation? She requested the Commission prohibit marijuana dispensaries in Canemah.

Mayor Holladay closed the public hearing.

Commissioner Shaw was in favor of excluding Canemah as Canemah was a national historic district and was an entry to the City.

Commissioner Smith said Canemah was a national historic district which made it different from other neighborhoods in the City. It was also adjacent to the Willamette Falls Legacy Project site. There were places for these types of businesses, but not in Canemah.

Commissioner Mengelberg agreed with the Commissioners Shaw and Smith.

Commissioner Ide was also in support of prohibition because of the future development of the Willamette Falls site.

Mayor Holladay did not think Canemah was an attractive gateway currently and redevelopment of the buildings along 99E would be an improvement. He was concerned about setting a precedent for giving Canemah special treatment in the future. If the citizens of Oregon City voted in favor of having marijuana businesses, it should be as fair as possible for everyone to participate.

Tony Konkol, City Manager, clarified currently marijuana businesses were allowed in the Willamette Falls District.

A motion was made by Commissioner Shaw, seconded by Commissioner Smith, to approve the first reading of Ordinance No. 16-1008: time, place and manner regulations for marijuana businesses (Planning File LE-16-0001)

including the amendment to Municipal Code Chapter 17.26, prohibiting marijuana businesses in Canemah. The motion carried by the following vote:

Aye: 5 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay, Commissioner Renate Mengelberg and Commissioner Nancy Ide

7. General Business

7a. Second Reading of Ordinance No. 16-1010: Adopting a Ban on Outdoor Cultivation of Marijuana

Mayor Holladay suggested continuing this item to give the City Attorney time to do additional research.

Ryan LaFrenier, resident of Oregon City, did not think outdoor grows would be a site nuisance as people should not be looking in his backyard or would be offended by what they saw in his backyard. He thought it was overstepping of the government to tell him what he could or could not grow in his backyard. The law had been passed in Oregon to allow marijuana. He thought forcing people to grow indoors created more costs for lights, fans, and space and made their home a target for burglary. It made people pay for things that the Earth provided naturally.

Cyrus Facchini, resident of Oregon City, wanted to take advantage of the availability of fertile land, rain, and sunshine to legally grow marijuana plants in his own personal backyard. Four of his neighbors could see the plants, but they had not had any issues. He should not have his rights taken due to the fear of future delinquency of his neighbor's children. It was expensive to grow marijuana indoors and some people had no space indoors to grow it. The plants flowered for about a month in late summer to early fall until they were harvested, and that was when it smelled the most. He wanted to grow his own, not purchase it at dispensaries.

Cynthia Towle, resident of Oregon City, referenced an article in Willamette Week regarding people's preference of growing marijuana outdoors instead of in greenhouses due to sustainability. The lights and equipment needed was devastating to sustainability practices. Many people grew their own marijuana because they could not afford it at dispensaries and they could not afford the equipment to bring the plants indoors. When she moved to Oregon City she looked into having chickens and was told they were allowed with the exception that if her neighbors complained about smell or flies she would have to get rid of them. She thought they could treat marijuana the same, that if there were community complaints then someone would have to get rid of their plants.

Tom Geil, resident of Oregon City, said the Planning Commission voted 4-1 in favor of recommending using State law as it stood. The Commission discussed the odor, safety, and crime, and found that four personal grow plants would not cause an issue. Code Enforcement and the Police Department already had enough to keep them busy and there was no inherent danger in growing a few plants. Marijuana was medically helpful. There were no regulations for growing hops for home brewing and that smelled as well and people grew all kinds of plants outdoors.

John Johnson, resident of Oregon City, was a cannabis grower. In the two years he had been growing it, no one had complained of the smell or noticed the plants. This was a hobby to him, and he had not had problems with people trying to steal his plants.

Julio Cotto, resident of Oregon City, had served in the military and was medically discharged. He had to take medication for the pain, but it affected his mind and he could not focus. The voters passed the law to make marijuana legal in Oregon and ever since he was introduced to cannabis he did not have to take any more pain pills. He was able to enjoy life again and it was important that he be able to grow it in his backyard. The pharmaceuticals had a lot worse side effects than the cannabis. He thought as long as he was growing it on his property in a place that would not be seen by the public, he thought it should be allowed. The smell was only temporary and happened when it was ready to be harvested. He was on a fixed income and could not afford to grow it inside or get it at a dispensary.

Jane Grimm, resident of Oregon City, thought the proposed ordinance was a misuse of City funds and time and was not in line with State rights. Growing marijuana indoors was more dangerous, especially in creating a fire hazard, than growing a few plants in a backyard. There were bigger issues that needed to be dealt with and citizens preferred not to have their rights stepped on.

Geo Haney III, resident of Oregon City, had been growing marijuana for several years and had never received a complaint about the smell. It was temporary, lasting about a month, and he did not think it was a crucial argument. Growing marijuana indoors did not help promote a green economy. It was better to grow it outdoors.

Matt Johnson, resident of Oregon City, had grown marijuana in his backyard and none of his neighbors had complained. Growing indoors could cause fires and he thought for environmental and safety reasons marijuana should be grown outdoors.

Jim Band, Police Chief, explained why this was being viewed as a nuisance. The use of marijuana to kids with developing brains was detrimental. For police it was about livability and what the community wanted. People had the right to feel safe in their yard regardless of their opinions about marijuana. He had received complaints about odor and visibility of marijuana in backyards. There had been robberies with indoor grows as well as outdoor grows. The biggest thing was keeping marijuana out of the hands of children. For any substance that could be dangerous, there was a difference between a backyard and behind a locked door. The question was what was the community expectation for how to protect kids.

Commissioner Smith was a school teacher who came from a family of police officers. He was weighing the conversation about protecting kids with the Commission's history of being reluctant to make decisions about what people could do on their property as well as the conversations about making changes retroactively which had not worked out well. There were citizens who were currently growing marijuana in their backyards. He appreciated the testimony that night. He was not sure if they needed to look into the legal question that was raised.

Mayor Holladay had asked the lawyer who drafted Measure 91 whether or not they had a legal standing to prohibit personal outdoor grows. He thought the intent of the legislature was that cities and counties would not be able to be more restrictive than the State law for personal grows.

Commissioner Shaw was concerned about protecting children. He was trying to weigh that against property rights.

Commissioner Ide was curious to see what the City Attorney had to say about the

email. They had not heard from people who wanted a ban on personal outdoor grows. She was concerned about the risk to the City in prohibiting the outdoor grows.

Commissioner Mengelberg said there had been testimony opposing the outdoor grows previously. It was not a simple decision. She was in favor of protecting children.

Mayor Holladay grew up in the 70s where marijuana was easy to get and it was no different now. The opportunity for someone to grow marijuana in their backyard would not present a greater risk to children as a whole. The voters had already spoken once and even if the voters in Oregon City passed the ban of commercial marijuana, it would not ban personal grows. He was in favor of deferring to State law and not discussing the issue further. He did not want to take the risk of being a test case for the issue.

Commissioner Smith was in favor of allowing outdoor personal grows, however the Commission might need more time to decide.

A motion was made by Commissioner Shaw, seconded by Commissioner Mengelberg, to continue the second reading of Ordinance No. 16-1010: adopting a ban on outdoor cultivation of marijuana to October 19, 2016. The motion carried by the following vote:

Aye: 5 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay, Commissioner Renate Mengelberg and Commissioner Nancy Ide

7b.

Discussion Regarding Measure 97 - Proposed Corporate Tax Increase

Mayor Holladay had invited proponents and opponents of Measure 97 to the meeting that night.

Dale Hendrick was in favor of Measure 97. Oregon was last in the country for the number of corporate taxes collected per year and the largest corporations experiencing this lower tax rate were making more money than they ever had and working families were making \$2,000 less per year than they did eight years ago. Income taxes had been steadily increasing to make up for lack of investment in critical services. Several years ago the revenue the State brought in was made up of 17% corporate taxes and now it was 7% from corporate taxes. Measure 97 was a corporate tax increase for those companies that made over \$25 million in Oregon sales and would affect less than 1% of Oregon's businesses. The money would be used for schools, healthcare, and senior services. It would only affect two lines of tax code. He gave personal examples as reasons these critical services needed to be improved and encouraged the Commission to stay neutral on the issue and allow voters to make their own decision.

Mayor Holladay said the opponent representative was not able to come to the meeting. He then took public testimony.

Amber Holveck, representing the Oregon City Chamber of Commerce, stated the Chamber Board was opposed to the measure. Jerry Turner, founder of local businesses and part owner of the Wild Hare Saloon in Oregon City, was quoted as saying Measure 97 was a way to get a sales tax in without calling it a sales tax. Oregon's corporate taxes were not the lowest in the US, but were the middle of the pack. Don Lewis, representing General Distributors, stated common sense told them the tax would be passed through to the consumer. Ms. Holveck thought one of the key reasons opposition to Measure 97 was the right choice was that it would damage Oregon's economy due to loss of jobs and would make Oregon one of the worst states

to expand a business or locate a new business. There many ways to quantify Oregon's rank for corporate taxes, but in none of them did Oregon rank last.

Sue Stein, representative of Stein Oil, said the climate of Oregon's economy made it difficult for medium sized businesses like Stein Oil. She thought they would be affected if Measure 97 passed. There was a high potential for loss of jobs. The government was not calling the proposed measure what it was, a sales tax. She did not think the tax would get to the needs of the State and more money would be needed. The State needed to be fiscally responsible.

Betty Mumm, resident of Oregon City, was concerned that there was no guarantee that the money would go to schools, seniors, or healthcare. She thought the money would go into the general fund and to PERS. The tax would get passed on to all citizens in the form of higher gas and grocery prices. These services needed to have funding, but this was not the answer.

Tom Geil, resident of Oregon City, said anytime taxes were placed on a corporation, they were passed down to the customers. There was a lot of confusing information in the media regarding this measure and he hoped more citizens would be able to hear the information presented tonight.

Debbie DeRusha, resident of Oregon City, said this would be a tax on the gross sales of larger corporations. She did not think it made sense and the side in favor of the measure seemed to be blaming the deficits in critical services on the inability to collect taxes from large corporations. The issues did not have anything to do with the ability to collect taxes. There was no plan to make sure the funds would go to these services and the measure would not fix the problems.

Joyce Gifford, resident of Oregon City, was a substitute teacher and agreed they needed to fix school funding. She did not think this measure was the way to do it, especially because it was taxing gross sales. If it was taxing net sales that would be different, but taxing gross sales would have to be passed on to customers.

William Gifford, resident of Oregon City, thought there were two flaws in the measure. One was taking from the gross receipts rather than from profits and the other was the money was not dedicated to go to these services. He thought the money would be used to fill the biggest gap, which would be PERS. He did not think it would be used to help the school system.

Mr. Hendrick said it was written directly in the measure that the funding would go to these services. There were numerous small businesses and community organizations that were advocates of the measure and they would not have gotten behind this measure if they didn't think the funds would be going to the right place. Most of the money would be coming from companies that made over \$100 million in sales and many were located outside of Oregon but did business in Oregon. He did not think it would be passed on to customers or would cause businesses to leave the State.

There was discussion regarding campaign funding including out of state funding for the opposition and unions funding in favor of the measure. There was further discussion about the lack of a mechanism to ensure the money would be spent on these services.

Commissioner Shaw said they were a business friendly city and were also pro-schools. He was concerned that there was no guarantee for use of the funds.

Commissioner Mengelberg said her economic development colleagues were against Measure 97 as it would be a deterrent to business recruitment. She thought the tax system had been broken for a long time and property tax revenues were falling behind due to the system. She was concerned if the measure did not pass many programs would be cut. She thought this was a good shot for a solution and was in support.

Commissioner Smith had been teaching for 16 years and class sizes were continuing to grow. It was overwhelming and difficult. He did not think this measure would fix it, however this was a way the State was trying to resolve the situation. He was not hearing a unanimous opinion on it from the Commission.

Commissioner Ide supported businesses and education. She thought she needed to study this issue more before she could offer an opinion.

Mayor Holladay said the State's general fund had been increasing, but they were not spending it well. He had heard from businesses in Oregon City that they would consider going somewhere else if the measure passed. That meant jobs for Oregon City residents moving out of state. He thought it gave some businesses advantage over others as some would have to pay the tax and others wouldn't. A retail sales tax in conjunction with lower property tax and income tax was a better solution. He was opposed to Measure 97 as he did not think the money would be spent wisely.

Kattie Riggs, City Recorder, announced the Commission received an email from Shawnda Horn, Owner of Double J Construction Inc. that was entered into the record.

8. Consent Agenda

A motion was made by Commissioner Ide, seconded by Commissioner Smith, to approve the consent agenda. The motion carried by the following vote:

Aye: 5 - Commissioner Brian Shaw, Commissioner Rocky Smith, Mayor Dan Holladay, Commissioner Renate Mengelberg and Commissioner Nancy Ide

- 8a.** Personal Services Agreement Amendment #4 with Brown and Caldwell - Sanitary Sewer Inflow and Infiltration Characterization Planning
- 8b.** Intergovernmental Agreement (IGA) between Clackamas River Water (CRW) and Oregon City for Water Service Supplied by CRW through Proposed Glen Oak Road Master Meter Intertie at Beaver Creek Road
- 8c.** Restrictive Covenant Non-Remonstrance Agreement for the Small Slope Subdivision Project (Planning File No. TP14-06)
- 8d.** Restrictive Covenant Non-Remonstrance Agreement for the Ed's Orchard Subdivision Project (Planning File No. TP15-07)
- 8e.** Restrictive Covenant Non-Remonstrance Agreement for the PGE Abernethy Substation Addition Project (306 and 308 18th Street - Planning File No. SP15-10)
- 8f.** OLCC: Liquor License Application- On-Premises Sales, New Outlet,

Applying as a Corporation, 88 Nails and Spa, 2050 Beaver Creek Road,
#104, Oregon City, OR 97045

8g. Minutes of the October 7, 2008 Work Session

8h. Minutes of the August 30, 2016 Special Meeting

9. Communications

a. City Manager

John Lewis, Public Works Director, gave updates on the Cove, smoke testing, and NPDES Annual Report. The Cove project was moving forward and would most likely not be completed by October 31, 2016 to reopen Main Street as previously thought due to the wet weather and starting later in the season than they wanted to. Staff would continue to work with the developer to get the project done. Most likely it would be done in January or February 2017. Smoke testing was currently occurring around the City in order to test the sanitary sewer system for imperfections. The National Pollutant Discharge Elimination System (NPDES) Annual Report was completed and posted on the City's website for public input. This was a requirement for the City's permit.

Mr. Konkol said the City was hosting the Clackamas Cities Association Dinner on October 25, 2016. The library was currently closed in order to get ready for the grand opening on October 15, 2016. The Fire Station across from the library would also have an open house on October 15, 2016. He introduced Phil Lewis, new Community Services Director.

b. Commission

Commissioner Mengelberg attended the Metro meeting regarding transportation funding, Oregon City Business Alliance Urban Renewal discussion, League of Oregon Cities Conference, and Economic Restructuring Committee meeting.

Commissioner Shaw attended the Greater Oregon City Watershed Council fundraiser, Boy Scout Troop meeting, National Day of Remembrance, OCBA Urban Renewal discussion, League of Oregon Cities Conference, Atkinson Church ribbon cutting, and CIC meeting.

Commissioner Ide attended the League of Oregon Cities Conference where the City received a Gold Standard Safety Award from City County Insurance recognizing Oregon City for excellence in safety practices resulting in few or no occupational injuries. She also attended a legislative forum with state representative candidates concerning human services programs and needs in the County related to seniors and those with disabilities, a community meeting to discuss solutions and options to address homelessness, and the annual day of observance for parents of murdered children.

Commissioner Smith led a few ghost tours and a parade last weekend.

c. Mayor

Mayor Holladay had been working with members in the community to defeat Measure

3-514. This measure would basically kill the ability to use Urban Renewal to do the kinds of good things they were doing downtown or possibly the Legacy project in the future. This was a badly crafted measure and would do damage to the economy of Oregon City. He urged people to vote no. He attended a meeting of mayors and city councils in Clackamas County to discuss the C4 bylaws. He urged people to vote yes on the police bond so they could get started on the new police facility.

10. Adjournment

Mayor Holladay adjourned the meeting at 9:48 PM.

Respectfully submitted,

Kattie Riggs, City Recorder