



Harrisburg City Council Work Session Minutes May 27, 2015

The Harrisburg City Council met in a Work Session on this date at City Hall, located at 120 Smith St., at the hour of 6:31PM. Presiding was Council President Mike Caughey. Also present were as follows:

- Kimberly Downey
- Don Shipley
- Robert Boese
- Sarah Puls
- Youth Advisor Bo Kelson
- City Administrator Brian Latta
- City Recorder/Asst. City Administrator Michele Eldridge

Absent this evening were Mayor Robert Duncan and John Loshbaugh.

The matter of Council Training on the Topic of Measure 91 – Recreational Marijuana

The City Council watched a video that was provided by the League of Oregon Cities in relation to recreational marijuana. The City Council discussed the video afterwards.

Puls brought up that the OLCC can limit the number of distributors of liquor; will they be able to do this for marijuana? Latta told her that the OLCC was still writing rules in relation to that. It's likely they will create rules in relation to the location of facilities. Shipley noted that OLCC sellers can't be closer than 1 mile to each other. Latta passed out the City of Philomath's ordinance in relation to medical marijuana facilities. (Please see Addendum No.1) He noted that it's very well done.

Shipley was interested in the LOC's video, about the ability to opt out; He was concerned that someone in Junction City could buy from a distributor, and then come here to smoke it. Council discussed that under personal use provisions, a person can't use marijuana in public places, so the deputies will still be treating it as misdemeanor. Shipley thought that we wouldn't want to opt out, especially if they can buy it in another City, and still use it here at home in Harrisburg. Latta said that he hasn't looked at the full measure yet. Shipley said that if we opted out, we wouldn't get the tax dollars. Latta said that tax scheme was very complex. The law wants to be preemptive of local taxes. Both Colorado and Washington have less revenue than they thought the program would generate.

Latta continued, and said that this ordinance is in relation to medical marijuana. You are allowed to create legislation related to time, place, and manner of operations. They want to prevent underage use, and prevent criminal activity. They especially want to protect the activity

in state law from being used as a pretext for trafficking other illegal drugs or activities. They want to prevent violence and the use of firearms, as well as to prevent driving under the influence. The main issue that Council had to keep in mind is that you can't ask one of these businesses to do something that you don't require from all the other businesses. For instance, if you require insurance from them, you'd have to require it for the other businesses in town. He thought it smart to not allow home labs, which could allow extraction of oils, resins, or derivatives of marijuana. The facilities have to watch out for air filtration and ventilation, and they can't dispose of garbage in the normal waste stream. He noted that Philomath doesn't allow a facility to be located within 1500 feet of any schools, or youth facilities. They also required that it be located within 2000 feet of a police department.

The City Council discussed that those regulations would really limit where a business could be. Latta added that if there could be properties in town that fit the regulations, but if the buildings are occupied, the applicants can't demand that you make space available for them. They would have to wait until the facility became available. Latta continued with other requirements in the ordinance, such as insurance, off street parking, full background checks, and examination of books and records. Puls was wondering why Philomath hadn't included recreational facilities in their ordinance; Latta thought it was because legislature is still working on those rules. Latta said that for now, our business license ordinance will not allow facilities in Harrisburg. The model ordinance doesn't address home occupations; grow operations, recreational facilities, or zoning regulations. Those are all things that we will want to address.

Caughey was in line with that. He noted that Seattle is looking at closing down half the places already operating, because of all the problems with them. He noted that the rules for medical marijuana, even in a state where it was legal, were not sufficient. While marijuana was still illegal at the federal level, Council anticipated that sometime in the future, that will change. Latta asked if he should still prepare an ordinance; Council members concurred that they want to be prepared by having it in place in the future. The City Council then briefly discussed the use of marijuana; none of them were happy with the legislation; and they were worried about how to enforce the regulations. Latta reminded them that we may have to use nuisance ordinances; especially when you are dealing with odors.

Boese asked if we would have two ordinances to deal with the different types of facilities, but Latta told him that we would likely have only one. We'd address each type of facility within that ordinance. Boese asked if the attorney had seen this; and was told yes. Our attorney's thought that the Philomath ordinance was one of the more comprehensive ordinances' in the state. He will use this as a base for our ordinance. We do want to create zoning and land use regulation in regards to facilities as well. City Council discussed some more of the issues that concerned them about marijuana regulation. Shipley wanted to limit facilities to not be closer than 1500' to another facility. They continued to talk about the potential locations of future facilities. Latta will continue to work on an ordinance that fits Harrisburg's needs.

The matter of a Quarterly Report on Progress of Strategic Plan Objectives and Actions

Staff Report: Latta said that we adopted the new Strategic Plan for 2015; and he planned on providing regular updates to the City Council. He noted that the objectives for projects in the future wouldn't be on the reports, since we haven't started them yet.

Council was curious about what Latta was doing in relation to objective 25; with visits to local businesses and industries. Latta told them that he's started, but he and Caughey will be visiting businesses in the future. He had met with Gheen Irrigation for 2 hours recently; that wasn't in relation to this goal, but it's the type of visit he would anticipate in the future. Boese was curious about his meeting with Gheen, especially if it was a 2 hour meeting. Latta told him that they talked about the project along Hwy 99, their business, and how they were going to move everything here in the future. They were concerned about the limitations of our garbage franchise as well; what they wanted to use was cheaper than what Republic Waste charges. They had been using a certain company, but Republic Waste called them on it, because they have exclusive franchise abilities. They decided to haul it out themselves, rather than paying Republic Waste to do so. The City Council talked about garbage services for a while.

Boese noticed that there is nothing on a water treatment facility on the list; Latta told him that's not a project for this fiscal year.

Others:

Boat Landing:

- Boese asked about the subject of removing rock from the boat landing. What had Latta discovered?
- Latta told him that he still hasn't heard from the Army Corp of Engineers as of yet, and explained the issues with the DSL (Department of State Lands) vs. the Army Corp of Engineers. Depending on their response, he plans on contacting our congressmen, in order to discuss why they aren't allowing us to maintain our boat landing. We are being prohibited from economic development in our community because the Army Corp won't allow us to maintain our boat ramp. He noted that we are halfway there, and he doesn't want to get into a conversation about it until we get some more answers.

Linn County Sheriff's Agreement

- Caughey asked how the agreement was coming along.
- Latta said that they were still negotiating the contract. He and Caughey had met with them about the hour's disparity. We were working on a compromise with them.

With no further business to discuss, the Work Session ended at the hour of 8:17PM.

Mayor

City Recorder

**CITY OF PHILOMATH
ORDINANCE 798**

**AN ORDINANCE ADDING PMC CHAPTER 5.40, A CHAPTER REGARDING
MEDICAL MARIJUANA FACILITIES, AND SETTING AN EFFECTIVE DATE.**

WHEREAS, Section 2.1 the City of Philomath Charter provides:

Powers of the city. The city shall have all powers that the constitutions, statutes, and common law of the United States and of this state expressly or implied grant or allow municipalities, as fully as though this charter specifically enumerated each of those powers; and,

WHEREAS, under Oregon law, local governments may regulate the operation and location of certain types of businesses within their jurisdictional limits except where such action has been specifically preempted by state statute; and,

WHEREAS, the City Council recognizes the need to establish rules and regulations for medical marijuana facilities within the City while minimizing potential impacts on nearby residential neighborhoods; and,

WHEREAS, the City Council desires to only allow operation of medical marijuana facilities within the City in ways that protect and benefit the health, safety, and welfare of existing and future residents and businesses of the City; and,

WHEREAS, the City Council finds that the unique characteristics of operating medical marijuana facilities and their potential impacts makes it necessary to establish reasonable time, place, and manner restrictions for such operation, and a separate registration process for medical marijuana facilities; and

WHEREAS, the City Council finds that it is reasonable to impose time, place and manner restrictions on the operation of medical marijuana facilities within the City; and

WHEREAS, there is a need to immediately address the establishment and operation of medical marijuana facilities within the City because the moratorium on those facilities expires on May 1, 2015.

THEREFORE, THE CITY OF PHILOMATH ORDAINS AS FOLLOWS:

Section 1. Section 5.40 Medical Marijuana, is added to Chapter 5 of the Philomath Municipal Code to read as follows:

5.40.010. Purpose. The purpose of this Chapter is to minimize any adverse public safety and public health impacts that may result from allowing medical marijuana facilities in the City by adopting particular time, place and manner requirements and a registration process for such facilities. Specifically, these time, place and manner requirements are intended to further the following objectives:

- A. Prevent the distribution of marijuana to persons under 21 years of age;
- B. Prevent revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- C. Prevent the diversion of marijuana from this state to other states;

- D. Prevent marijuana activity that is legal under state law from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- E. Prevent violence and the use of firearms in the cultivation and distribution of marijuana;
- F. Prevent drugged driving and the exacerbation of other adverse public health consequences associated with the use of marijuana;

5.40.020 Definitions

- A. "Controlled Substances" means substances designated as Schedule I or Schedule II controlled substances in the Code of Federal Regulations Title 21, Chapter II, Part 1308.
- B. "Manager" means the City Manager of the City of Philomath or his/her designee.
- C. "Marijuana" means all parts of the plant of the Cannabis Moraceae, whether growing or not, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin, as may be defined by Oregon Revised Statutes or as they currently exist or may be amended from time to time.
- D. "Medical Marijuana" means all parts of marijuana plants that may be used to treat or alleviate a Medical Marijuana Qualifying Patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition.
- E. "Medical Marijuana Facility" means a medical marijuana facility that is registered by the Oregon Health Authority under ORS 475.300-475.346 and that sells, distributes, transmits, gives, dispenses or otherwise provides Medical Marijuana to qualifying patients.
- F. "Operator" means the person who is a proprietor of a Facility, whether in the capacity of Operator, lessee, sub-lessee, mortgagee in possession, licensee or any other capacity.

5.40.030 Registration Required.

The Operator of any Medical Marijuana Facility in the City must possess a valid annual Medical Marijuana Facility registration issued under this Chapter and must comply with the requirements of any and all state and local laws.

5.40.040 Initial Registration Application and Fee Requirements

- A. Applications for initial and renewal Medical Marijuana Facility registrations must be submitted to the Manager and must be signed under penalty of perjury. The application documents must include at least the following:
 - 1) the location of the proposed facility
 - 2) The true names and addresses of the persons or legal entities that have an Operatorship interest in the facility; that have loaned or given money or real or personal property to the applicant for use by the Facility within the preceding year; or that have leased real property to the applicant for future use.

- 3) A detailed description of the type, nature and extent of the enterprise to be conducted.
 - 4) A detailed description of the proposed accounting and inventory systems for the Facility.
 - 5) Certification that the proposed Facility is registered as an Oregon Medical Marijuana Facility pursuant to ORS 475.300-475.346.
 - 6) Certification that the proposed Facility has met all applicable requirements in the Philomath Development Code.
 - 7) Certification that all current fees and taxes owed have been paid.
 - 8) Detailed illustrations (to scale) of all proposed signage and location of such signage.
 - 9) Such other information deemed necessary by the City Manager to conduct any investigation or background check
- B. At the time of submission of an initial Facility registration application, the applicant must pay a Medical Marijuana Facility registration application and investigation fee. The fee amount shall be set by Council Resolution. No portion of the fee is refundable.
 - C. A separate registration application must be submitted for each proposed location.
 - D. The applicant for a proposed Facility shall be solely responsible for directly contacting property owners, tenants, and occupants of property within 1500 feet of the proposed site for the Facility to confirm that it complies with the location conditions of this Chapter as set out in Section 5.040.060.J.

5.040.050 Registration Termination – Renewal – Fee.

- A. A Facility registration terminates automatically on May 1 of each year, unless a registration renewal application is approved.
- B. A Facility registration terminates automatically if federal or state statutes, regulations or guidelines are modified, changed, or interpreted in such a way by state or federal law enforcement officials as to prohibit operation of the Facility under this Chapter.
- C. A registration renewal application shall include information similar in nature to that provided on the registered party's initial registration application and must be submitted to the City no less than thirty (30) days prior to expiration of the registration.
- D. At the time of submission of a Facility registration renewal application, the registered party must pay a Medical Marijuana Facility registration renewal application and investigation fee. The fee shall be set by Council Resolution. No portion of the fee is refundable in the event operation of the Facility is discontinued for any reason.

5.040.060 Registration Conditions

Any Medical Marijuana Facility must comply with the following requirements, in addition to any other state or local requirements:

- A. The Facility must continue to be registered in good standing as an Oregon Medical Marijuana Facility pursuant to state law.

- B. The Facility must meet applicable laws and regulations, including, but not limited to, building and fire codes, including the payment of all fines, fees, and taxes owing to the City.
- C. The Facility must not manufacture or produce any extracts, oils, resins or similar derivatives of Marijuana on-site and must not use open flames or gases in preparation of any products.
- D. Marijuana and tobacco products must not be smoked, ingested or otherwise consumed on the premises of the Facility.
- E. Operating hours for retail sales to Medical Marijuana Qualifying Patients must be no earlier than 9:00 a.m. or later than 5:00 p.m. on the same day.
- F. The Facility must utilize an air filtration and ventilation system which, to the greatest extent feasible, confines all objectionable odors associated with the Facility to the premises. For the purposes of this provision, the standard for judging "objectionable odors" shall be that of an average, reasonable person with ordinary sensibilities after taking into consideration the character of the neighborhood in which the odor is made and the odor is detected.
- G. The Facility must provide for secure disposal of Marijuana remnants or by-products; such remnants or by-products shall not be placed within the Facility's exterior refuse containers.
- H. The Facility must not be co-located on the same tax lot or within the same building with any Marijuana social club, smoking club or grow site.
- I. The Facility must be located within 2000 feet of the Philomath Police Department.
- J. The Facility shall not be located:
 - 1) Within 1500 feet of any public or private school, public or private preschool, Public library, public park, public or private youth activity center,
 - 2) Within 1500 feet of any structure housing a public or private youth organization or any structure housing public or private classes on at least a weekly basis for people under the age of 21; or
 - 3) Within 500 feet of any public property not otherwise described in this section, not including right-of-way; or
 - 4) Within 200 feet of a residential zone; or
 - 5) Within 1500 feet of a public or private daycare center; or
 - 6) Within 1500 feet of another facility; or
 - 7) Within 500 feet of a State Highway.
- K. The Facility shall have no Marijuana in edible form.
- L. No minor is allowed on the premises unless the minor is a Medical Marijuana Qualifying Patient and is accompanied by a parent, guardian, or caregiver whose purpose is to procure the minor's Medical Marijuana.
- M. A person with any felony convictions may not be an Operator, employee, or volunteer of a Facility, or have any financial interest in the Facility.
- N. The Facility must have an accounting system specifically designed for enterprises reliant on transactions conducted primarily in cash and

sufficient to maintain detailed, auditable financial records. If the City finds the books and records of the Facility are deficient in any way or if the accounting system is not auditable, the Facility must modify the accounting system to meet the requirements of the City.

- O. Each Facility must keep and preserve for a period of at least three (3) years records containing at least the following information:
 - 1) Daily wholesale purchases (including grow receipts) and retail sales, including a cash receipts and expenses journal;
 - 2) State and federal income tax returns;
 - 3) Names and any aliases of any Operators of the Facility
 - 4) Names and any aliases of any employees or volunteers of the Facility
 - 5) Names of and any aliases of any persons with a financial interest in the Facility;
 - 6) Any additional information that the City deems necessary.
- P. Each Facility must display its current registration inside the Facility in a prominent place easily visible to persons conducting business there.
- Q. Sales or any other transfers of Marijuana products must occur completely inside the Facility building and must be conducted only between the Facility and Medical Marijuana Qualifying Patients. No walk-up or drive-through service is allowed.
- R. Each Facility must obtain and maintain General Liability insurance in an amount of not less than \$1,000,000 per occurrence/\$2,000,000 aggregate each claim, incident, or occurrence for Bodily Injury and Property Damage that specifically covers the facility for liability related to selling marijuana to an already impaired person who leaves the facility driving a motor vehicle.
- S. Each Facility must maintain adequate off street parking for the Facility.

5.040.070 Background Checks

The applicant will provide a completed Oregon and National criminal background check provided by the Oregon State Police Bureau of Criminal Information and the Federal Bureau of Investigation for each individual who is proposed to be an Operator, employee, volunteer, or person with a financial interest in the Facility as part of the application submitted to the City. The Police Department may verify the criminal background checks provided by the applicant under ORS 181.534 to determine whether any person therein has any history of felony convictions. If, following an initial or renewal application, an additional person is proposed to be an Operator, employee, volunteer, or person with a financial interest, then that registered party must provide a criminal background check on that individual prior to that individual assuming said position.

5.040.080 Examination of Books, Records, and Premises

- A. To determine compliance with the requirements of this Chapter, Philomath Development Code, or any and all applicable regulations, the Manager may examine or cause to be examined by the agent or representative of the Manager, at any reasonable times, the premises

- of the Facility, including wastewater from the Facility, and any and all financial, operation, and facility information, including books, papers, payroll reports and state and federal income tax returns. Every registered party is directed and required to furnish the Manager the means, facilities, and opportunity for making such examinations and investigation.
- B. As part of investigation of a crime or violation of this Chapter which law enforcement officials reasonably suspect has taken place on the premises, the Philomath Police shall be allowed to view surveillance videotapes or digital recordings at any reasonable time.
 - C. Without reducing or waiving any provisions of this Chapter, the Philomath Police Department shall have the same access to the Facility, its records and its operations, as allowed to state inspectors. Denial or interference with access shall be grounds for revocation or suspension of a Facility Registration.

5.040.090 Administrative and Other Remedies for Non-Compliance, Administrative Appeals, and Penalties.

- A. The Manager may deny, suspend, or revoke a Facility registration for failure to comply with this Chapter or rules adopted under this Chapter, for submitting falsified information to the City or the Oregon Health Authority, or for non-compliance with any other City chapters or regulations, or violation of any state or federal laws.
 - 1) Any suspension or revocation pursuant to this section shall be in writing, setting forth the reasons therefore, and giving the registered party written notice by first-class United States Mail at least ten (10) calendar days prior to the effective date of the revocation or suspension.
 - 2) A decision to deny, suspend, or revoke a Facility registration may be appealed by filing a Notice of Appeal in writing physically delivered to the Manager on or before the effective date. Unless the Manager has declared imminent danger to the public will exist, the Manager's decision to revoke or suspend is stayed pending appeal. The matter shall be heard by the Philomath Municipal Court which shall determine, by preponderance of the evidence, whether the Manager's decision should be upheld or reversed, or upheld in part and reversed in part.
- B. In addition to the remedies of suspension and revocation, failure to comply with the requirements of this Chapter constitutes a violation of Philomath Municipal Code. Violations are subject to fines not to exceed \$500.00 per day. Each day in violation constitutes a separate offense.
- C. The remedies provided in this Section are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this Chapter prohibit or restrict the City or other appropriate prosecutor from pursuing criminal charges under state law or City Chapter. Such remedies include, but are not limited to, any equitable remedies such as temporary restraining orders or other injunctive relief.

5.040.100 Confidentiality

Except as otherwise required by law, it shall be unlawful for the City, any officer, employee or agent to divulge, release or make known in any manner any financial or employee information submitted or disclosed to the City under the terms of this Chapter. Nothing in this Section shall prohibit:

- A. The disclosure of names and addresses of any operator or provider of equity or debt financing for a Facility; or
- B. The disclosure of general statistics in a form which would prevent identification of financial information regarding a Facility Operator; or
- C. The presentation of evidence to a court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the City under this Chapter; or
- D. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures.

5.040.110 Severability

If any section, subsection, paragraph, sentence, or word in this Chapter is deemed to be invalid or beyond the authority of the City, either on its face or as applied, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences, or words of this Chapter, and the application thereof; and to that end sections, subsections, paragraphs, sentences, and words of this Chapter shall be deemed severable.

Section 2.

Emergency Clause. The earliest imposition of the provisions of this Chapter is necessary to preserve the peace, health, and safety of the public. Accordingly, an emergency is declared, and this Chapter will take effect on May 1, 2015.

PASSED by the Council this 13th day of April 2015.

APPROVED by the Mayor this 13th day of April 2015.

SIGNED:
Rocky Sloan, Mayor

ATTEST:
Ruth Post, MMC, City Recorder

