

Minutes
Aurora City Council Meeting
Tuesday, May 12, 2015, at 7:00 P.M.
City Council Chambers, Aurora City Hall
21420 Main Street NE, Aurora, OR 97002

STAFF PRESENT Kelly Richardson, City Recorder
Mary Lambert, Finance Officer
Darrel Lockard, Public Works Superintendent
Dennis Koho, City Attorney

STAFF ABSENT; Officer Marcellais, Marion County

VISITORS PRESENT: Gayle Abernathy, Aurora
Karen Townsend, Aurora
Jan Peel, Aurora
Jim Fisher, Aurora
Tim Corcoran, Aurora
Joseph Schaefer, Aurora

1. CALL TO ORDER OF THE CITY COUNCIL MEETING

Meeting was called to order by Mayor Bill Graupp at 7:02 pm

2. CITY RECORDER DOES ROLL CALL

Mayor Graupp- Present
Councilor Sahlin - Present
Councilor Sallee-Present
Councilor Brotherton-Present
Councilor Vlcek - Present

3. CONSENT AGENDA

- a) City Council Meeting Minutes – April, 2015, Councilor Vlcek points out in the minutes the conversation regarding the garbage can surrounds and he thought that they really had not addressed it and Mayor Graupp informs him that yes they had in the budget. Vlcek asks if the letter has gone out regarding the planter strips to each property owner Richardson states no it has not however we had addressed it in the newsletter a few times. Vlcek asks if owners could kill everything in strips and replant or leave empty I think we should organize a cleanup day first before we just kill it all.
- b) Planning Commission – April, 2015
- c) Historic Review Board Meeting – March, 2015

ACTION ITEM; Councilor Sahlin will work on getting a bid for the planter strips.

Motion to approve the consent agenda as presented was made by Councilor Vlcek and is seconded by Councilor Sallee. Motion approved by all.

4. CORRESPONDENCE –

- a) Email regarding Community Development Grant, no discussion Mayor explains.

5. VISITORS

Anyone wishing to address the Aurora City Council concerning items not already on the meeting agenda may do so in this section. No decision or action will be made, but the Aurora City Council could look into the matter and provide some response in the future. No comments were made during this section.

Karen Townsend explains to the council the trash can surrounds originally were done through a grant many of them are in need of repair and paint or both. I have an issue with the city paying to maintain the planter strips along 99E the owners of the property are responsible for the upkeep and maintenance. The downtown businesses pay to maintain that area and I for one don't think we should have to pay again to maintain a few properties that just don't want to comply.

Mr. Corcoran I have property along that 99E section and I didn't realize it was our responsibility but I do now and I will get that done.

6. PUBLIC HEARING, Opens at 7:20 pm

- a) Discussion and or Action on Code Changes and LA-15-01 regarding Medical Marijuana Dispensaries in the Commercial District. Planning Commission Chair Joseph Schaefer presents the following staff report and findings and explains to City Council that the Planning Commission took into consideration the comments made by HRB but found that it should still remain in the Historic District Commercial Overlay. The Planning Commission position on this is regarding time space and manner.

Memorandum

MID-WILLAMETTE VALLEY COUNCIL OF GOVERNMENTS

105 HIGH STREET S. E. SALEM, OREGON 97301-3667
TELEPHONE: (503)588-6177 FAX: (503)588-6094

TO: Aurora City Commission
FROM: Renata Wakeley, City Planner
RE: Legislative Amendment 2015-01 (LA-15-01)
DATE: April 28, 2015 for presentation at May 12, 2015 hearing

REQUESTED ACTION

The City Council's options for taking action on Legislative Amendment 15-01 include the following:

- A. Adopt the findings in the staff report and adopt Legislative Amendment 15-01:
 1. As presented by staff; or
 2. As amended by the City Council (stating revisions).
- B. Take no action on Legislative Amendment 15-01.
- C. Continue the public hearing:
 1. To a time certain, or
 2. Indefinitely.

BACKGROUND

In 2013, House Bill 3460 created a medical marijuana registration system and allowed medical marijuana dispensaries (MMDs) to be located in certain zones, including commercial, industrial, and mixed use. On March 19, 2014, Senate Bill 1531 was signed into law giving local governments the ability to impose certain regulations and restrictions on the operation of medical marijuana dispensaries. Senate Bill 1531 also gave local jurisdictions the ability to impose a moratorium on MMDs up until May 1, 2015.

On April 30, 2014, the Aurora City Council passed Ordinance 475, which declared a moratorium on MMDs effective until May 1, 2015.

The City Council gave the Planning Commission and staff general direction in moving forward with potential legislative action to amend the code in light of state rulemaking and SB 1531. The Planning Commission had discussion regarding proposed amendments to the Aurora Municipal Code on several regularly scheduled Planning Commission meetings in 2014 and 2015 and also received comment from interested parties.

Administrative rulemaking discussions continue at the legislative level related to Measure 91 (recreational marijuana) and *are not* included/addressed as part of the staff report and proposed legislative amendment being reviewed before you at this time.

The following sections of the Aurora Municipal Code (AMC) are proposed for amendment:

- 16.04 Definitions
- 16.14 Commercial
- 16.22 Historic Commercial Overlay

Legislative Amendment 15-01 includes the adoption of the draft code amendments to the Aurora Municipal Code. The revisions are attached in a **bold** and ~~strikethrough~~ format for review purposes (see Exhibit A).

The purpose of the proposed amendment is to create “reasonable regulations” as allowed by Senate Bill 1531 to minimize conflicts between MMD’s and surrounding uses. Absent an update to the AMC, beginning on May 1, 2015 it is possible that an applicant could request review of a MMD under the existing provisions of the AMC as a “general retail and convenience sales”,

“medical or dental services”, “nurseries”, “drugstore” or other similar permitted use or development. Without specific criteria addressing MMD’s, the City could be forced to make interpretations of the Aurora Municipal Code and Development Ordinance that could be subject to legal challenge and it could become more difficult to mitigate conflicts with surrounding uses.

The proposed amendment seeks to add clarity and certainty to the Aurora Municipal Code – Title 16.

FINDING OF FACT AND CONCLUSIONS

The Aurora Planning Commission, after careful consideration of the testimony and evidence in the record, adopted the following Findings of Fact and Conclusions:

1. In accordance with the post-acknowledgement plan amendment process set forth in Oregon Revised Statute 197.610(1), the City Planner submitted the draft proposed amendments to the Oregon Department of Land Conservation and Development on February 19, 2015, which was 47-days prior to the first evidentiary hearing on April 7, 2015.
2. Amendments to the Code, Comprehensive Plan, and/or Maps are considered Legislative Amendments subject to 16.80.20. Legislative Amendments shall be made in accordance with the procedures and standards set forth in AMC 16.74-Procedures for Decision Making-Legislative. A legislative application may be approved or denied.
3. AMC 16.74.030 outlines notice requirements. At least ten days prior to the first public hearing, the City shall publish notice in a newspaper of general circulation. Due to a staff error, the publication request to the Canby Herald on March 4, 2015 was not received. Staff immediately sent the notice to publication in the April 8th edition, which is at least 10 days prior to the scheduled May 12, 2015 City Council hearing and staff finds this criteria is met.
4. Proposed amendments for consideration of legislative changes to the provisions of the Comprehensive Plan, implementing ordinances and maps are a legislative action. Section 16.74 calls for amendments to the Development Code to be processed as a recommendation by the Planning Commission and a decision by the City Council.
5. AMC 16.74.060 includes the standards for decision of Legislative Amendments as outlined under FINDINGS below.
6. The Planning Commission reviewed the proposed legislative amendments at a April 7, 2015 public hearing and made a recommendations for Council adoption of Legislative Amendment 2015-01, with minor changes.

FINDINGS

A. The recommendation by the planning commission and the decision by the council shall be based on consideration of the following factors:

- 1. Any applicable statewide planning goals and guidelines adopted under Oregon Revised Statutes (ORS) Chapter 197;*

FINDINGS: Goal 1, Citizen Involvement: A public hearing on the proposed amendments was scheduled and noticed before the Planning Commission on April 7, 2015 and a second hearing was scheduled and noticed before the City Council on May 12, 2015. Notice was posted at City Hall and published in the Canby Herald. The staff report was available for review one week prior to the Planning Commission and City Council hearings. This is consistent with City procedures. Staff and the Planning Commission found Goal 1 is met.

Goal 2, Land Use Planning: The proposal does not involve exceptions to the Statewide Goals. Adoption actions are consistent with the acknowledged AMC for process. Goal 2 generally supports clear and thorough local procedures. Staff and the Planning Commission found Goal 2 is met.

Goal 3, Agricultural Lands and Goal 4, Forest lands are found not to be applicable.

Goal 5, Open Spaces, Natural Resources, and Historic Areas: The proposed amendments included the addition of MMD's as a conditional use in the Historic Commercial Overlay. The proposed amendment does not affect regulation of existing businesses or commercial uses. Staff finds the amendment maintains existing business and allows a new use (MMD's), as permitted by state law, while imposing standards to minimize negative impacts in order to allow the development of a historic business center that remains easily accessible, convenient and a pleasant place to shop. Staff and the Planning Commission found Goal 5 was met.

Goal 6, Air, Water and Land Resource Quality: Goal 6 is not applicable. The proposal does not address Goal 6 resources.

Goal 7, Natural Hazards: Goal 7 is not applicable. The proposal does not address Goal 7 resources.

Goal 8, Recreational Needs: Goal 8 is not applicable. The proposal does not address Goal 8 resources.

Goal 9, Economic Development: The draft code amendments respond to a need/revision identified by Senate Bill 1531 to potential permitted uses on commercial and industrial lands. The proposed code amendments are not found to deter employment or business opportunities but rather to allow for greater economic uses of commercially zoned properties while also protecting the intent of the commercial and historic commercial retail core for retail and service commercial uses. The Planning Commission has determined that the Industrial zone is not an appropriate location for MMD's as the intent of the Industrial zone is intended to accommodate activities that are non-retail in nature and/or require larger lots for larger employment and manufacturing needs (AMC 16.16.010). Staff and the Planning Commission found Goal 9 is met.

Goal 10, Housing: Goal 10 is not applicable. The proposal does not address Goal 10 issues.

Goal 11, Public Facilities and Services: Goal 11 is not applicable. The proposal does not address Goal 11 issues.

Goal 12, Transportation: The proposed code amendments expand upon permitted uses in the commercial zones while prohibiting MMD's in the industrial zone in order to "provide a circulation system which is safe and efficient for both vehicles". The City finds that Industrial properties are not well suited for retail uses/impacts. Further, MMD's are listed as conditional uses in the commercial zones and potential transportation impacts can be mitigated/regulated through the Aurora Transportation System Plan and development code. Staff and the Planning Commission found this Goal is met.

Goal 13, Energy Conservation: Goal 13 is not applicable as MMF's can be considered to be as intensive, if not more so, than other businesses with the commercial code. The proposal does not address Goal 13 resources.

Goal 14, Urbanization: Goal 14 is not applicable. The proposal does not address Goal 14 issues as the proposed code amendments apply to existing commercial sites within the City limits.

ORS 197 does not include specific notice requirements for legislative processes but the City met all notice requirements under the AMC for Legislative Amendments. ORS 227.186, more commonly known as Measure 56 notice, does not apply as the proposed amendments do not *reduce* permissible uses of properties in the affected zones.

2. Any federal or state statutes or rules found applicable;

FINDINGS: Staff finds the adoption actions are consistent with Oregon Revised Statute 197.610(1) for notice to the Department of Land Conservation and Development. Measure 56 notice was not required as the proposed amendments do not *reduce* permissible uses on commercial lands.

The addition of a specific definition for Medical Marijuana Dispensaries under AMC 16.04 ensures the MMD is registered with the Oregon Health Authority and thus complies with the standards in ORS 475.314 and OAR 333-008-1000 through 333-008-1400. These State-imposed and regulated standards include, but are not limited to: payment of annual registration fees, review to determine the proposed location is not within 1,000 feet of schools and other MMD's, registration as a business with the Secretary of State, a background check on the person responsible for the MMD, implementation of security, alarm and surveillance measures, and compliance with operational standards.

Proposed amendments to 16.14- Commercial zone and 16.22- Historic Commercial Overlay zone further refine restrictions to the potential location of MMD's that the City of Aurora finds reasonable, based upon Senate Bill 1531.

Staff and the Planning Commission found this criterion is met.

3. The applicable comprehensive plan policies and map; and

The following Comprehensive Plan Goals and associated policies were found to be applicable to this application:

Goal 1- Citizen Participation: Develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.

FINDINGS: A public hearing on the proposed amendments was scheduled before the Planning Commission on April 7, 2015 and a second hearing will be held by the City Council on May 12, 2015. Notice was posted at City Hall and published in the Canby Herald. The staff report was available for review one week prior to the planning commission hearing. This is consistent with City procedures. Staff and the Planning Commission found this goal is met.

Goal 2- Planning Process: Establish a land use planning process and policy framework document (comprehensive plan) as a basis for all decisions and actions related to use of land and ensure an adequate factual base for such activities.

FINDINGS: Adoption actions are consistent with the acknowledged AMC. Staff and the Planning Commission found this goal is met.

Goal 9- Economic Policies

- 3. Foster commercial and industrial activities to meet the expressed needs of City residents.*

FINDINGS: The draft code amendments respond to a need/revision identified by Senate Bill 1531 to potential permitted uses on commercial and industrial lands. The proposed code amendments are not found to deter employment or business opportunities but rather to allow for greater economic uses of commercially zoned properties while also protecting the intent of the commercial and historic commercial retail core for retail and service commercial uses.

The Planning Commission has determined that the Industrial zone is not an appropriate location for MMF's as the intent of the Industrial zone is intended to accommodate activities that are non-retail in nature or land intensive commercial businesses (AMC 16.16.010). Staff and the Planning Commission found this goal is met.

- 2. The applicable provisions of the implementing ordinances.*

FINDINGS: The draft code amendments respond to a need/revision identified by Senate Bill 1531 to potential permitted uses on commercial and industrial lands. The proposed code amendments are not found to deter employment or business opportunities but rather to allow for greater economic uses of commercially zoned properties while also protecting the intent of the commercial and historic commercial retail core for retail and service commercial uses.

The Planning Commission has determined that the Industrial zone is not an appropriate location for MMD's as the intent of the Industrial zone is intended to accommodate activities that are non-retail in nature and/or require more land for employment or manufacturing than commercial businesses (AMC 16.16.010). Staff and the Planning Commission found the proposed code amendments can be established in compliance with the development requirements of the Aurora Municipal Code while maintaining the intent of the Senate Bill.

B. Consideration may also be given to proof of a substantial change in circumstances, a mistake, or inconsistency in the comprehensive plan or implementing ordinance which is the subject of the application.

FINDINGS: Staff does not find a change in circumstance, mistake or inconsistency in the comprehensive plan or implementing ordinances. The proposed code amendments are a result of Senate Bill 1531 and the City's need to refine and clarify permitted locations and uses for MMF's within the City of Aurora and adopt "reasonable regulations" for their review. Staff and the Planning Commission found this criterion is met.

EXHIBIT A Aurora Municipal Code (AMC) section 16.04- Definitions
Aurora Municipal Code (AMC) section 16.14- Commercial
Aurora Municipal Code (AMC) section 16.22- Commercial Historic Overlay

EXHIBIT B Senate Bill 1531 relating to marijuana facilities; creating new provisions; amending ORS 475.314; and declaring an emergency.

EXHIBIT C Correspondence from Aurora Historic Review Board (March 27, 2015)

Councilor Vlcek asks if other cities are lightly regulating or are they strictly regulating?
Schaefer I think really that we are in the middle range of that. I (Schaefer) think that most people here today to testify against it being in the Historic Commercial Overlay.
Councilor Vlcek also asks about the 100 foot buffer on a daycare because they are the same kids going to school so why would that be different. Vlcek is there any way to change this and Schaefer states yes this is just a recommendation from Planning Council has the authority to change it as they see fit. There are a few more questions regarding security and security systems and Schaefer states that much of this is addressed by the State statute that is regulating this. Vlcek can the State change their rules and undo everything we are trying to achieve City Attorney Koho yes I suppose they could. The Council then discusses the waste removal off site requirement that Planning put in and the Council decides that it doesn't need removed but to be in a secure locked garbage can.

The hearing is now open to the public for comments we will begin with the in favor first and will allow 5 minutes for each person.

Hearing none in favor we move onto not in favor,

Jan Peel, resident and business owner of Home Again Antiques, I would like to know why we are even considering allowing such a thing in our town? Mayor Graupp states we have to decide on something somehow to regulate it currently in our code we have nothing to regulate it so they would only be required to follow what the state has laid out. Peel I am opposed to allowing it in the Historic District Commercial zone and I think if we have to allow it in other areas then it needs to be strictly regulated by the city.

Jim Fisher, I don't have a business in Aurora but I am a resident here for many years and I am opposed to them in the Historic Commercial area. I really don't like the thought of them being here at all.

Gayle Abernathy, I am a resident and the Historic Review Board Chair, The HRB sent a letter to the Planning Commission I assume they received and reviewed it but we never received any type of confirmation I think that it would have been a good idea to let us know that they received it. I own a liquor store in Portland and I have a security system and I am in a good area and I still get call outs. Mayor Graupps states that we are not going to concern ourselves with the security aspect we will leave that to the state to regulate. As a board and resident the Historic District and downtown shopping area is not the proper place for it.

Chair Schaefer comments that is why we made the fee for the conditional use permit 5,000 so that it can cover those incidentals.

Karen Townsend, I am a resident a business owner and on the Historic Review Board, I am opposed to this being allowed in the Historic Commercial zone. I believe you have all received some letters from the businesses in the Historic District that state they are opposed to allowing it in the zone as well. These businesses are very important to Aurora even if you don't shop in them. Aurora is a destination on the Historic registry and is very well known around the state and something of this nature in the downtown area would be a negative impact. The board was very surprised to see in the staff report that it wouldn't be an economic downturn will we disagree.

Tim Corcoran, business owner and resident I too am opposed to it I don't think our clients would feel at ease about it.

There is various questions regarding heavy restrictions and Mayor Graupp states we are also trying to not involve the City Attorney as that will be very costly as well.

There were some side bar conversations at this point however the Mayor moved the meeting along.

Public Hearing closes at 8:02 pm

Council has a brief discussion regarding the issues brought up here tonight and they all agree to these changes;

- Remove it from the Historic District Commercial Overlay
- Change from 500 feet from a daycare to 1,000 feet from a daycare
- Change hours of operation from 10 to 7 pm to 10 to 5 pm
- Garbage/Waste must be in a locked secure area.

A motion is made by Councilor Sahlin to approve LA 15-01 with the four revisions as stated and is seconded by Councilor Vlcek. Motion is passed by all present.

7. REPORTS

a) Mayor Bill Graupp

- Mayor report everything I have been working on is in the budget.

No discussion at this point.

ACTION ITEM: NA

b) Marion County Deputy

- Deputy report, Officer Marcellais is absent tonight and has not submitted a report.

Council discussed, Councilor Vlcek as the liaison over the department I wanted to get a sense of whether or not all of you would be ok with me discussing a more proactive approach in the area of citations. It is the consensus of the group that it would be acceptable for Vlcek to have this conversation with the new deputy.

ACTION ITEM: NA

c) Traffic Safety Committee

- Traffic report, NA

Council discussed, NA

ACTION ITEM: NA

d) Finance Officer

- Finance officer asks if there are any questions regarding her report there were no questions at this time. Most of the discussion will be during the budget meeting tomorrow.

Council discussed, NA

ACTION ITEM: NA

e) Public Works

- Public Works report, Currently I am working with DEQ to obtain our permit and get it updated. Also working on the preparation for the proposed new irrigation area. Working on our discharge permit and aeration side we did sludge removal today. There is a possibility that we may need to turn on well 5. In parks someone stole a picnic table.

Council discussed Councilor Vlcek asks the status of our static level compared to other years, Lockard we could have some issues since the draw down has been increasing and we are in for a dry summer. Councilor Sallee requests due dates to be on the report so we are aware of the timeframe involved.

Preliminary report from Bruno tree care indicates 18 trees are in need of attention. Question was asked if we should get a second opinion and Lockard informs the group that Bruno is certified tree arborist and he had done this preliminary report at no cost.

ACTION ITEM: Council has asked for completion dates be placed in the public works report.

f) Parks Committee

- Park report Councilor Sahlin informs the group that the equipment has been placed in the storage area and the locks have been completed. He asks City Recorder Richardson if anyone from Pryde has contacted her and she states no they have not.

Council discussed.....

ACTION ITEM: Councilor Sahlin would like a schedule for the lights and locks at the park.

g) City Recorder

- Recorder report is presented.

Council did not have any questions or discussion regarding the report.

ACTION ITEM: NA

h) City Attorney

- City Attorney report Koho informs council that he has a meeting with the judge regarding the Eddy property. I have met with MR. Sills regarding his window violations that is why he is not hear tonight he has agreed to pull his letter at this time and has agreed to file an application with HRB. As far as Ross RV they have stated that they are not selling items from the lot it is repairs only. The Mcknight letter has gone out to their attorney explaining that they will need to comply with the SDR and the 6 items listed however the Conditional use permit since they have pulled their application they are not expected to comply with those conditions.

Council discussed, NA

ACTION ITEM: NA

8. ORDINANCES, RESOLUTIONS AND PROCLAMATIONS

- a) Ordinance 478 An Ordinance Amending the City of Aurora Municipal Code (Conditional Use) Second reading.

A Motion is made by Councilor Sahlin to approve Ordinance 478 as presented and is seconded by Councilor Sallee 4-0 Councilor Southard abstained and state a conflict.

- b) Ordinance Number 479 Amending the Aurora Municipal Code (Medical Marijuana Dispensaries) First Reading.

A Motion to accept the 1st reading of Ordinance 479 is made by Councilor Sahlin and is seconded by Councilor Vlcek. Passed by all.

9. NEW BUSINESS

- a) Discussion and or Action on Window Violation in the Historic District on Contributing Structure Located at 21328 Hwy 99E Mr. Sills property. PULLED
- b) Discussion and or Action on MORE Intergovernmental Agreement. What is the reason for this if we are already doing this in house now why would we need to contract it our now. This is so we could if we so chose to enter into an agreement with other agencies to utilize what other agencies have. Rather than go out and rent something somewhere else.
- c) Discussion and or Action on Public Works Operations, Councilors begin to ask Public Works Superintendent Lockard many different questions regarding the operations taking place in public works department. They are wondering why now do you need so much more contracted help especially with not seeing and capital improvements happening the conversation quickly turns to expectations at hire at which point Lockard then asks if he is under employee review upon which time City Attorney Koho cautions the Council that this is now moving in a different direction and that they need to back off that this is not the venue for this type of questioning at which point they stop the questions of Superintendent Lockard.

Councilor Sallee informs the group that she attended the meeting regarding HB 534 and read the letter from Aurora into the record as she didn't see it in the packet.

10. OLD BUSINESS

- a) NA

11. ADJOURN,

Mayor Graupp adjourned the May 12, 2015 Council Meeting at 9:08 PM.



Bill Graupp, Mayor

ATTEST:



Kelly Richardson, CMC
City Recorder