



SHERWOOD CITY COUNCIL MEETING MINUTES
22560 SW Pine St., Sherwood, Or
April 28, 2015

REGULAR SESSION

1. **CALL TO ORDER:** Council President Sally Robinson called the meeting to order at 7:05 pm.
2. **COUNCIL PRESENT:** Council President Sally Robinson, Councilors Linda Henderson, Dan King, Jennifer Harris, and Jennifer Kuiper. Mayor Krisanna Clark and Councilor Beth Cooke were absent.
3. **STAFF AND LEGAL COUNSEL PRESENT:** City Manager Joseph Gall, Assistant City Manager Tom Pessemier, Police Chief Jeff Groth, Planning Manager Brad Kilby, Senior Planner Michelle Miller, Administrative Assistant Colleen Resch, and City Recorder Sylvia Murphy. City Attorney Chris Crean.
4. **APPROVAL OF AGENDA:**

MOTION: FROM COUNCILOR KUIPER TO APPROVE THE AGENDA, SECONDED BY COUNCILOR KING. MOTION PASSED 5:0, ALL PRESENT MEMBERS VOTED IN FAVOR. (MAYOR CLARK AND COUNCILOR COOKE WERE ABSENT).

Council President Robinson addressed the next item on the agenda.

5. PUBLIC HEARINGS

- A. **Ordinance 2015-005 Amending multiple sections of the Zoning and Community Development Code including Divisions I, II, and III as it relates to the regulation of medical marijuana dispensaries and declaring an emergency**

The City Recorder read the public hearing statement.

Senior Planner Michelle Miller recapped the staff report and said staff recommends the Council conduct their first hearing and reading, schedule the second hearing and reading for May 5, 2015 and approve Ordinance 2015-005. Ms. Miller provided a presentation (see record, Exhibit A) regarding amending the code to regulate medical marijuana dispensaries (MMD). She reminded the Council that the passage of Measure 91 which legalized the recreational use of marijuana was approved by the voters in November and noted that Sherwood voters did not approve the measure. She clarified that the hearing is not about recreational marijuana. She noted that in an earlier work session the Council and the Planning Commission indicated that Sherwood should not consider banning MMD.

She provided some history and said in 1998 voters approved the Oregon Medical Marijuana Act which provided an opportunity for medical marijuana patients to obtain marijuana from growers. She said the system worked for a number of years but there was excess amounts of marijuana created from the grow operations. She said in response to this problem the Oregon legislature passed HB 3460 which required MMD to register with the Oregon Health Authority (OHA). She said in 2014 Senate Bill 1531 authorized local jurisdictions to regulate dispensaries by imposing time, place and manner restrictions on their operations and also allowed a moratorium through May 1, 2015. She noted Sherwood enacted a moratorium last spring that expires on May 1.

She commented on the statewide MMD land use regulations which include: must be located in commercial, industrial, mixed use or agricultural zones, cannot be in the same location as a grow site, cannot be within 1,000 feet from a school or another MMD, operators must have a background check, must be a registered business in Oregon, must install a security system and cannot be mobile. She referred to a map illustrating what the statewide regulations mean for Sherwood. She said with this information the City conducted public outreach for developing local time, place and manner restrictions on MMD. She said the Planning Commission held a public work session on March 10, 2015 and a majority of the participants thought that MMD could be located in the commercial and industrial zones and indicated that a buffer was important for parks and placing some restrictions on the hours of operation and a staff level review would be appropriate. She said there was an online survey during the month of March which generated over 170 responses and the vast majority indicated a preference for industrial zones only, they approved the buffering for parks and plazas, limiting the hours of operation and adding security measures. She said the Sherwood Police Advisory Board (PAB) reviewed the proposed regulations on April 2, 2015 and they provided amendments to the Planning Commission. She said the PAB recommended restricting the size of the MMD to 2,500 sf, industrial zones only, not allowing deliveries and creating a definition of public plazas.

She said the Planning Commission considered all of the input and recommended changes such as adding the following definitions: medical marijuana dispensary, mobile vendor, and public plaza. Ms. Miller presented the zoning and buffer restrictions recommended by the Planning Commission which is a 1000 foot buffer from schools, parks and plazas and located in industrial zones only. She said a special use category was recommended which says MMD have to register and comply with OHA under the Medical Marijuana Act and any violations of the OHA Rules are a violation on this code. She said the recommendation included a Type II land use process which requires notice to property owners within 1000 feet as well as other notice requirements and a staff level decision. She said it also created criteria for MMD in the Special Use Categories with hours of operation, added buffers and additional security measures. She commented on Type II land use processes and the type of review that is required.

She summarized the Planning Commission recommendation which: limits the land zone to industrial land only, reduces the allowable size of a dispensary to 3,000 sf, allows the dispensary to remain open from 10 am – 8 pm all days, and adds a definition for public plaza. She referred to a comparison of other jurisdictions' responses to medical marijuana regulations in terms of zoning, buffers, hours of operation and other regulations. She said specifically the Planning Commission recommends as follows: add definitions to Chapter 16.10, add medical marijuana to the Use categories in general and light industrial, add medical marijuana dispensary under a Type II process, and add criteria for MMD in Special Use category.

Councilor Kuiper referred to page 13 of the Council meeting packet which states a MMD is not to exceed 5,000 sf and asked why she mentioned 3,000 sf.

Ms. Miller said the information on page 13 is the first draft of the proposed code language that was subsequently amended and attached as exhibit A which is on page 66 of the packet. She said that is the official draft language for the code.

Council President Robinson referred to Attachment 1 to the staff report, the Final Rules for the Medical Marijuana Dispensary Program, which is dated January 28, 2015 and asked if those are the final rules and have they been provided previously.

Ms. Miller said this information was provided to the Planning Commission on April 14, 2015 as Exhibit B. She said she assumes the OARs are continually updating and that is the latest version.

City Attorney Chris Crean added that OHA has updated the rules for the dispensaries only and are currently going through the rule making for the recreational marijuana. He said the draft rules are available and they need to be completed before the end of this year. He stated these are the final rules for medical marijuana.

Council President Robinson asked if these are the rules for grow sites. Mr. Crean said yes, for medical marijuana grow sites and said the rules are on page 29.

Councilor Kuiper asked if there is any movement to allow co-location of MMD as well as recreational. Mr. Crean said he did not know. Ms. Miller said according to a seminar she attended they are not confident that SB 936 regarding co-location will be moving forward.

Council President Robinson asked if the City receives an application for a grow site and Sherwood's typical Type II process requires noticing around where the proposed site will be, and asked if the site is confidential how will this be handled.

Ms. Miller said she has asked the LOC that question and that is a grey area that they know exists and are working on. She said they are not required to divulge their grow operations or their dispensary operations but if they are going to be public they will have to provide an address.

Councilor Henderson said page 53 of the packet includes the definition of a park and said Sherwood is going to have a \$5 million path called the Cedar Creek Trail and she said path or trail is not listed in the definition of park. She asked if that is going to be a concern and commented on the public that will be using that trail.

Ms. Miller said these are existing parks that Sherwood has now and when we add a park or trail they will redefine. She said there are prohibitions now against smoking in public facilities and they would likely add a buffer.

Councilor Henderson referred to grow houses and how they are currently regulated under code. She asked if grow houses need a business license.

Mr. Crean said if they are conducting business in the City they should get a business license and if they are doing it in a residential zone they would need a home occupancy permit.

Chief Groth said grow houses need to register with the State as a caregiver which would allow them to provide marijuana to a registered card holder and grow sites would need to be registered as a provider of a caregiver or a caregiver.

Mr. Crean said he stands corrected and Chief is right that under the current regulations for medical marijuana a grow operation is not a commercial activity and is just growing for cardholders.

Chief Groth said his position that was presented to the Council in a letter dated April 7, 2015 is independent of the Police Advisory Board. He said the way the medical marijuana program is set up, it is not defined as a classic retail business commercial operation. He said they have the ability to get reimbursed for their cost of providing marijuana as medicine and that is it. He said someone that is growing just needs to register with the State and they are not defined as a business.

Mr. Crean said this is just the MMD and not the grow operations under the existing medical marijuana statutes and administrative rules and said a year from now it will be recreational and we will have this discussion again.

Councilor Henderson asked if you can have a grow site and a dispensary in the same building as long as they don't have the same address. She said that is her concern and asked staff to respond before the next hearing. She commented on recreational marijuana and medical marijuana and how they will be regulated by different agencies which are OHA and OLCC. She referred to an article in the Oregonian that OLCC has requested \$10 million to fund 23 positions to regulate this program based on estimated revenue.

Councilor Harris stated medical marijuana has been legal for 17 years. She clarified that the major change is they are allowing local jurisdictions to regulate. Ms. Miller said the program was fairly unregulated where card holders were registered and there were growers for the card holders that were allowed a certain number of plants. She said it was found that there was excess marijuana based on the production of the plants and the excess was going to these dispensaries and there wasn't a place for them to operate legally. She said in 2013 they created a registered dispensary program.

Chief Groth said the impudence was the dispensary issue. He responded to Councilor Henderson's previous question and said under OMMP (Oregon Medical Marijuana Program) a grow site can be next to a MMD they just can't be in the same addressed facility. Discussion followed regarding the same address but different suite numbers. Chief Groth reminded the Council that grow sites are not regulated and there is currently no mechanism to regulate them. He provided examples and said this could become a confusing topic.

Councilor Henderson referred to page 37 regarding packaging which states *containers designed and constructed to be significantly difficult for children under 5 years of age to open and not difficult for adults to use properly*, and asked how that is regulated and monitored.

Councilor Harris asked Chief Groth what issues have these MMD been experiencing. Chief replied there has been trouble with MMD dispensing to customers without medical marijuana cards, charging more

than they should and acting as a for profit business. Chief said for the most part the MMD program has flown under the radar and the vast amount of people involved do not wish to draw attention. He said there have not been any significant crimes associated with the program.

Councilor Harris said the two major issues the Chief stated are not being addressed by this proposed ordinance. Chief Groth said the issues are being addressed and incorporating the ORS into our code is a critical component because one of the complaints the OMMP has sustained is that it is unregulated. He said technically it is regulated by the OHA but they have a low number of individuals tasked with that. He stated his position is that the community is going to look to their Police Department to manage and supervise MMD's and make sure they are operating the way they should. He said without writing a new set of code language the simplest way to do that is to incorporate the ORS language into our code and give us the ability to enforce it.

Councilor Harris asked if location and hours of operation meet any of these issues. Chief Groth said hours is the least issue and needs to be reasonable and the medicine has to be available. He said the bigger issue is the location and said it is important that we make that decision carefully.

Councilor Henderson said she heard that you can buy up to 24 oz. a day, which makes you assume they are reselling the product, and asked Chief Groth how that information would be communicated to OHA or local law enforcement. Chief said it would not be reported to law enforcement. He said if the MMD is operating within the regulation they are not going to report. He said the regulation and inspection would potentially show a problem or violations occurring. He stated he would not expect any self-reporting.

Councilor Harris asked Chief if he is aware of customers buying from MMD and reselling. He said he could assume or speculate that if a customer is receiving a maximum quantity allowed on a daily basis they are probably not using themselves and could be stockpiling or could be a caregiver. He said you can be a grower or caregiver for multiple patients.

Councilor Henderson asked if caregivers have different cards for each patient. Chief said he would have to do some research.

Ms. Miller said the State legislature is realizing that all of this excess marijuana that is going out into the system needs to be curbed.

Chief Groth said the big concern is the grow sites that are supporting dispensaries, they are growing far more marijuana than the MMD needs and they are distributing it somewhere. He said customers could have a card of their own and be a caregiver.

Councilor Henderson referred to the Chief's remarks that we have caregivers and growers in Sherwood and don't know where they are. Chief said they do not have to report or register with the Police Department. He said that is a point that is important to medical users, that there needs to be confidentiality and trying to find the balance has been a challenge with the State. He said there is clear confidentiality and law enforcement does not have the authority to seek information. He said they can call and provide a name or an address and confirm that an individual or location is registered but that is all they can do.

Ms. Miller said in a few months people will be allowed to grow privately and you won't be able to determine the difference between a grow site and a personal use site. Chief Groth said if patients have a medical marijuana card they can self-support and may not ever need to go to a dispensary.

Councilor Harris said based on the grow sites the Sherwood PD is aware of, has there been problems with these sites. Chief Groth said no and stated the growers get into trouble if they are not registered and are over producing.

Councilor Kuiper asked if the grow operations are regulated on how much they can grow. Ms. Miller said they are regulated with the number of plants and the number of patients they grow for but noted it is expediential.

Mr. Crean said this is what LOC and AOC refer to as "card stacking" at grow sites. Chief Groth said you would get in trouble for growing more than you are registered to grow.

Councilor Kuiper asked if there are any regulations to avoid the card stacking. Mr. Crean said that is one of the major priorities.

Councilor Henderson commented on the lack of regulations and grey areas.

Councilor Harris said from her research there has been zero incidences of overdosing on marijuana. Chief Groth responded that he has not seen any research that would disagree with that. He said the industry will refer to overdosing on marijuana when discussing edibles and how they are produced.

Council President Robinson opened the public hearing.

Tony Bevel, Sherwood resident came forward and stated the Council spent an hour focusing on how the MMD system will be abused and said they need to focus on the benefits of medical marijuana. He provided a personal family experience and said it relieves pain. He said in a way Sherwood is banning MMD by regulating them so heavily. He asked if MMD patients will be able to inject or smoke in a park or within 1000 feet of a school. He said Sherwood is banning it by limiting location and limiting the time and noted that we don't regulate doctor's offices by location or time. He asked if people without a medical marijuana card will be able to get into these MMDs. He asked how many applications Sherwood has received.

Nancy Taylor, Sherwood resident approached the Council and said she visited Alcolism.com and shared information with the Council and asked them to consider this information as they are putting restrictions on people with medical needs. She commented on putting MMDs in industrial zones and asked how long does it take for the Police to get to the industrial zones. She said MMDs are prone to robbery.

Shawn Garland, Sherwood resident came forward and said he is member of the Police Advisory Board (PAB) and said they have spent most of their time discussing this issue and made a recommendation to the Planning Commission. He said the PAB decided to add additional regulations to what the State currently mandates. He said he was in the minority among the group and does not believe Sherwood should create any additional restrictions or barriers for medical marijuana patients to obtain their doctor prescribed prescriptions. He said this issue is strictly medical marijuana and not recreational. He commented on medical marijuana patients who are battling diseases and provided a personal family

experience and illustrated ways that medical marijuana can be beneficial. He encouraged the Council to move past stereotypes and not add additional burdens to medical marijuana patients by restricting access.

Ivonne Gebhardt, Sherwood resident approached the Council and provided a personal experience with medical marijuana patients. She said government is meant to protect people and not regulate to strangulate. She said we need to educate people on the topic. She said the Council is elected to represent Sherwood and asked them to be proactive with what the citizens want with regard to the recreational use.

Tess Kies, Sherwood resident came forward and referred to the ordinance title which states “declaring an emergency.” Councilor Henderson said that means the ordinance becomes effective upon adoption and most ordinances have a 30 day period before they become effective. Ms. Kies commented that MMD’s are non-profit and asked what the incentive is. She said it is her understanding the medical marijuana patients must have a prescription.

With no further public testimony, Council President Robinson closed the public hearing.

Councilor Kuiper thanked the Planning Commission and the Sherwood Police Advisory Board for their efforts.

Councilor Harris said she agrees with Mr. Garland and this is a medication that has been legal for 17 years and there is a need and she provided examples of conditions that medical marijuana has been known to treat. She shared a personal family experience where medical marijuana was beneficial. She said medical marijuana and recreational marijuana should be separate. She referred to the negative stigma of using medical marijuana. She said the medical benefits of marijuana are incredible. She stated alcohol is ten times more destructive to your body than marijuana. She said the State regulations are enough but she is not opposed to the other regulations being proposed.

Councilor Kuiper said she does not disagree with Councilor Harris and commented on the work that has been put into this proposal. She said the proposal is reasonable.

Councilor King said he approves of what the Planning Commission and the Police Advisory Board have proposed and noted that it is an experiment and adjustments can be made if this does not work.

Councilor Henderson asked Ms. Miller to remind the Council of what other municipalities have done regarding MMD’s. She said it doesn’t appear that Sherwood is making it more difficult for these businesses or the patients than our neighboring municipalities. She referred to the time and resources that have gone into combatting youth substance abuse in Sherwood. She stated these regulations can be changed later if they are not working. She provided a personal family experience where medical marijuana was beneficial but is concerned about access to youth whenever you are welcoming this type of business into the community. She reminded the citizens that this was the first reading and there will be another reading on May 5, 2015. She thanked everyone that worked on the proposal.

Council President Robinson asked if the Police Advisory Board recommended reducing the maximum size of the facility from 2,500 to 3,000 square feet. Ms. Miller said the initial recommendation from the Planning Commission was 5,000 square feet maximum size which is consistent with the industrial zone.

She said the Police Advisory Board recommended a 2,500 square feet maximum size. She said the Planning Commission recommended to the Council 3,000 maximum square feet and noted that Washington County also proposed 3,000 maximum square feet.

Council President Robinson said the Chief mentioned the importance of incorporating by reference the OARs and she asked if that is in the code. Ms. Miller said the regulations are for the ORS which are the medical marijuana statutes. She said the OARs are enabled under ORS by statute. She said OARs are the rules that the ORS allows to happen.

Council President Robinson referred to page 69 of the packet where they are proposing to add a new category to the code under 16.38.020 Medical Marijuana Dispensaries and asked if it would be appropriate there to say that these regulations incorporate the OHA, OARs and other rules. Mr. Crean said they are incorporated under 16.38.020.A.2. He noted that with respect to the ORS, or state statutes, a medical marijuana facility must have a current valid registration with the OHA under the statutory requirements. He said with respect to local enforcement the second sentence states *“failure to comply with Oregon Health Authority regulations is a violation of this Code.”*

Council President Robinson referred to 16.38.020.A.2 and said the section first refers to OHA rules and then refers to them as regulations. Mr. Crean said that is a statement of the subject of that provision more than an operative provision itself. He said rules and regulations are the same.

Council President Robinson asked if Council was in agreement with the recommended hours of operation. She said she prefers to coincide with liquor stores and close on Sundays. Mr. Crean said State law allows liquor stores to be open on Sunday and said some franchises choose not to. Ms. Miller said that liquor stores need to be open at least 8 hours and have the option of being open on Sundays.

Council President Robinson referred to the comparison chart and asked if the Chief is in agreement with the recommended hours. Chief Groth said he supports the 10 am - 8 pm, 7 days a week proposal. He said it needs to be made available to patients. Council President Robinson asked if he had adequate staff on Sundays. Chief Groth stated that he is adding responsibilities to the Department.

Council President Robinson said she does not like the regulation requiring security bars on doors and windows. Ms. Miller said it is not required and if the proprietor wanted to add security bars they need to be on the inside.

Councilor Kuiper asked about smoked or darkened windows and asked if that is a State requirement. Ms. Miller said she will look into that and let Council know.

Council President Robinson recommended adding to the public park or plaza restrictions to add “owned by City or other government agencies”.

Councilor Harris asked about parks that are owned by HOAs. Ms. Miller said the definition of a public park or other recreational facility which is under the control, operation or management of the City or other governmental agencies. Ms. Miller said HOA parks would not be included in the buffer but they are in residential zones and would not be impacted.

Chief Groth followed up on previous questions and said the Sherwood Liquor Store is open 10:30 am – 7:30 pm Monday through Thursday and 10:30 am – 8:00 pm Friday through Saturday and closed Sunday. He said there is no requirement in the State statute concerning grey windows and said the requirement is that the product cannot be in public view through the window.

Mr. Crean noted that the OARs have detailed regulations for security at dispensaries but nothing with respect to smoked windows or bars.

Council President Robinson asked if the OHA shuts down a MMD for violation, will the City be notified. Ms. Miller said with a Type II staff level decision process those could be written into the conditions of approval.

Council President Robinson clarified the requirement by the State to have a fully operational security alarm system and asked if the MMD would need to have a permit. Ms. Miller said the City no longer requires permits for alarms.

Council President Robinson said there is a provision that allows for an employee with a medical marijuana card to consume marijuana on the premise and out of sight from the public. She asked if any neighboring jurisdictions have attempted to regulate this provision. Ms. Miller said she has not heard of any jurisdictions regulating that.

Councilor Harris clarified that you can't smoke marijuana in public. Chief Groth said that is correct and said the medical marijuana program does not allow for public consumption. He noted that the provision is specific to employees of MMD's and the rationale is if an employee is there for an 8 hour shift they may have a need to have some medicine. He said a customer card holder that comes in cannot buy a product and consume it on the site.

With no further comments, Council President Robinson asked for a motion.

MOTION: FROM COUNCILOR HARRIS TO APPROVE ORDINANCE 2015-005 AND PLACE IT ON THE NEXT AVAILABLE COUNCIL MEETING AGENDA FOR ADDITIONAL PUBLIC COMMENT AND CONSIDERATION AMENDING MULTIPLE SECTIONS OF THE ZONING AND COMMUNITY DEVELOPMENT CODE INCLUDING DIVISIONS I, II, and III AS IT RELATES TO THE REGULATION OF MEDICAL MARIJUANA DISPENSARIES AND DECLARING AN EMERGENCY. SECONDED BY COUNCILOR KUIPER, MOTION PASSED 5:0, ALL PRESENT MEMBERS VOTED IN FAVOR. (MAYOR CLARK AND COUNCILOR COOKE WERE ABSENT).

City Manager Gall said there will be a Town Hall Meeting related to the legalization of recreational marijuana on Thursday, May 29 at 6:30 pm at the Police Department. He said Senator Thatcher and Representative Davis will be on hand to update the public.

Council President Robinson addressed the next item on the agenda

11. ADJOURN:

MOTION TO ADJOURN: COUNCILOR KUIPER MOTIONED TO ADJOURN, SECONDED BY COUNCILOR KING. MOTION PASSED 5:0, ALL PRESENT MEMBERS VOTED IN FAVOR. (MAYOR CLARK AND COUNCILOR COOKE WERE ABSENT).

Council President Robinson adjourned the meeting at 8:50 pm.

Submitted by:

Sylvia Murphy, MMC, City Recorder

Krisanna Clark, Mayor