

**City of Phoenix
City Council Meeting
Public Works Office
1000 S. "B" Street
Monday, January 6, 2014**

DRAFT

CALL TO ORDER

Mayor Jeff Bellah called the regular meeting of the City Council to order on Monday, January 6, 2014 at 6:32 p.m. in the Public Works Office.

ROLL CALL

PRESENT: Stan Bartell, Bruce Sophie, Karen Jones, Carolyn Bartell, Terry Helfrich, Chris Luz, Jeff Bellah

Staff Present: Steve Dahl, City Manager/Recorder
Janette Boothe, Deputy City Recorder
Derek Bowker, Chief of Police
Steve Weber, Finance Director
Kevin Caldwell, Public Works Superintendent
Kurt Knudsen, City Attorney

PLEDGE OF ALLEGIANCE

PROCLAMATIONS:

Thanking Ray's Management and Employees for Their Service to the Community. Mayor Bellah requested representatives from Ray's Food Market to come forward to present the proclamation to them. Mayor Bellah read aloud the proclamation as he presented a framed proclamation declaring January 2014 as Ray's appreciation month.

ELECTION OF COUNCIL PRESIDENT AND VICE PRESIDENT:

Councilor Luz nominated Councilor Sophie for Council President. Councilor C. Bartell seconded the nomination. Hearing no other nominations, Mayor Bellah asked for roll call.

ROLL CALL VOTE AS FOLLOWS:

Ayes: C. Bartell, Jones, S. Bartell, Luz, and Helfrich
MOTION APPROVED WITH FIVE AYES

Councilor C. Bartell nominated Councilor Jones for Council Vice President. Councilor Luz seconded the nomination. Hearing no other nominations, Mayor Bellah asked for roll call.

ROLL CALL VOTE AS FOLLOWS:

Ayes: C. Bartell, Sophie, S. Bartell, Luz, and Helfrich
MOTION APPROVED WITH FIVE AYES

ORDINANCES/ PUBLIC HEARINGS – LEGISLATIVE:

Second Reading of Ordinance Amending Section 12.06.030 of the City of Phoenix Municipal Code and changing the Street Renaming Procedures and Standards. Mayor Bellah asked if anyone on Council had any ex parte contacts or conflicts of interest and none were declared. Mayor Bellah opened the public hearing at 6:40 p.m.

THOSE IN FAVOR OF THE AMENDMENT:

No one spoke in favor of the amendment.

THOSE IN OPPOSITION TO THE AMENDMENT:

No one spoke in opposition to the amendment.

Mayor Bellah closed the public hearing at 6:42 p.m.

COUNCIL DELIBERATION:

MOVED BY SOPHIE, SECONDED BY JONES, TO ADOPT ORDINANCE NO. 944, AMENDING SECTION 12.06.030 OF THE CITY OF PHOENIX MUNICIPAL CODE AND CHANGING THE STREET RENAMING PROCEDURES AND STANDARDS. Councilor Helfrich commented the Planning Commission worked diligently on this amendment and he fully supports their effort. There was no further discussion.

ROLL CALL VOTE AS FOLLOWS:

Ayes: Sophie, C. Bartell, Jones, S. Bartell, Chris Luz, and Helfrich

MOTION APPROVED WITH SIX AYES

CONSENT CALENDAR:

- 1) Approval of the Minutes of the November 12, 2013 City Council Study Session
- 2) Approval of the Minutes of the December 3, 2013 Special City Council Workshop
- 3) Approval of the Minutes of the December 10, 2013 Special City Council Workshop
- 4) Approval of the Minutes of the December 16, 2013 Regular City Council Meeting
- 5) Re-appointment of Three Members to the Parks Commission
- 6) Re-appointment of Ike Eisenhower to the Planning Commission

Mayor Bellah pulled items regarding the re-appointments. **MOVED BY JONES, SECONDED BY SOPHIE. TO APPROVE THE MINUTES LISTED IN THE CONSENT CALENDAR.** There was no further discussion.

ROLL CALL VOTE AS FOLLOWS:

Ayes: Sophie, C. Bartell, Jones, S. Bartell, Chris Luz, and Helfrich

MOTION APPROVED WITH SIX AYES

Mayor Bellah noted the correction to the agenda item for the name change of Marie to Satgyano. He inquired whether any members up for re-appointment are present. David van de Velde stood, as Mayor Bellah asked for roll call to consent to the re-appointment of the three members to the Parks Commission.

ROLL CALL VOTE AS FOLLOWS:

Ayes: Sophie, C. Bartell, Jones, S. Bartell, Chris Luz, and Helfrich

MOTION APPROVED WITH SIX AYES

Mayor Bellah requested Ike Eisenhower to stand up, as he announced his appreciation for Mr. Eisenhower's dedication to the Planning Commission and noted the City is seeking more volunteers to fill the three open positions of the Planning Commission. Mayor Bellah asked for roll call to consent to the re-appointment of Ike Eisenhower to the Planning Commission.

ROLL CALL VOTE AS FOLLOWS:

Ayes: Sophie, C. Bartell, Jones, S. Bartell, Chris Luz, and Helfrich

MOTION APPROVED WITH SIX AYES

UNFINISHED BUSINESS:

- 1) Approval of Letter to Urban Renewal. Mayor Bellah explained this letter is a revision of the letter prepared for the prior City Council meeting. He inquired whether Council was satisfied with the draft as is. Mayor Bellah suggested inserting dates for completion of the goals outlined in the letter. Further discussion followed, as Council's consensus was to add dates to the letter to give a timeline to assist Urban Renewal in determining the feasibility of each of the goals. Additional discussion followed regarding minor corrections noted by Council. Council's consensus was to direct Mr. Dahl to send the letter out with the noted corrections.

- 2) Approval of the RFP for Attorney Services. Mayor Bellah expressed Mr. Dahl prepared the proposal with information gathered from other cities and requested Council discussion. Councilor S. Bartell noted that he would like the Council to review the current contracted attorney, if Attorney Knudsen is interested in the position. Councilor Luz suggestion was to review the current contract with Attorney Knudsen and query him on his suggestions for attorneys to assist with items outside Attorney Knudsen's expertise. Councilor C. Bartell noted she was happy with Attorney Knudsen and added that a review of his contract was appropriate. Councilor Helfrich noted he is pleased with Attorney Knudsen's performance and suggested reviewing the contract to identify whether his current contract suits the City's needs. Councilor Sophie explained that a request for proposal is a common practice by many Cities. He further stated the Community is served better when Council is able to identify whether the City is being represented in the best manner. Councilor Sophie added that sending out RFPs for an attorney does not eliminate the current City Attorney from applying for this position, nor does it imply his performance has not been executed satisfactorily. Further discussion followed, as Councilor Luz inquired whether Attorney Knudsen was interested in continuing in the position. Attorney Knudsen replied he is comfortable with Council's decision to send out RFPs to identify what types of services are out there. Councilor S. Bartell commented that he would like to move forward with sending out the RFP.
MOVED BY SOPHIE, SECONDED BY LUZ, TO APPROVE THE REQUEST FOR PROPOSAL FOR ATTORNEY SERVICES AND THAT THE PROCESS COMMENCE WITH ALL APPLICATIONS REVIEWED BY COUNCIL. There was no further discussion.

ROLL CALL VOTE AS FOLLOWS:

Ayes: Sophie, C. Bartell, Jones, S. Bartell, Chris Luz, and Helfrich

MOTION APPROVED WITH SIX AYES

- 3) Review of Revised Marijuana Cultivation Ordinance. Attorney Knudsen gave a staff report on the draft ordinance he prepared and explained the draft is a combination of ordinances he reviewed from both California and Oregon. He further explained the ordinance prepared was an attempt to achieve the best balance between the opportunity to cultivate marijuana within the City limits and not creating an attractive nuisance. He went onto explain concerns from the community are reflected in the ordinance for Council's consideration.

Andrea Adams, Talent, urged Council to abandon a waste of time in pursuing an ordinance that violates the rights of individuals in the community provided in Oregon State Law. She added she wanted to encourage the Council to focus on Oregon law over California, as Oregon law is different. She cautioned Council that if the City moves forward with the proposed ordinance, the City may be involved in litigation. She added that she would like to see the City discover peaceful solutions that do not violate the rights of the citizens of Oregon. She added that a more careful review of the laws already in place in the State of Oregon regarding cultivating medical marijuana would provide the City with authority to enforce laws that exist without adding additional restrictions.

Melanie Barniskus, Phoenix, expressed the current ordinance in the City of Phoenix regarding a property that is a nuisance can be applied to any property that has become a nuisance. She added she felt that targeting all marijuana growth within city limits is discriminatory. She further added that there are many laws regarding the cultivation of medical marijuana and the City has every right to send over a police officer to a property that has any part of a marijuana plant in view of the public from outside the property, as that would not be in compliance with Oregon law. Additionally, Ms. Barniskus pleaded with council to not impose any further restrictions on top of the restrictions imposed by the state and enforce the municipal code and Oregon law that is already in place.

Leland Berger, Portland, noted the ordinance Attorney Knudsen prepared is very thorough and agreed with Attorney Knudsen's comment regarding finding a balance in the power of a municipality to control nuisance in the context of a state law that trumps the City's power to take certain actions. He expressed he has not researched this topic extensively; however, he noted the legal counsel for the Oregon American Civil Liberties Union has, as he explained there may be further costs to the City regarding litigation if the City pursues the ordinance that was drafted, as many parts of the draft are in conflict with the Medical Marijuana Act. He further outlined the discrepancies he located in the document.

Councilor Jones inquired about suggestions for Council to alleviate the issue of the odor nuisance. Further discussion followed, as Attorney Knudsen explained the ordinance was drafted to alleviate the nuisance. As discussion progressed, Councilor Jones inquired at what point the cultivation of marijuana would be too large that it would require it to be an

improper land use within City limits. Mr. Berger explained that the Medical Marijuana Act establishes the maximum amount of plants that an individual property may have. Further discussion followed.

Tere Knight, Medford, addressed council regarding the odor nuisance and argued with the rationale for the ordinance, adding that it is a plant and she questions the motives for the ordinance.

Tori (inaudible), Ashland, she commented she is concerned that illegal grows were not a problem before medical marijuana was legal. She further explained the OMMP law provides avenues for police enforcement. Ms. Adams noted that medical marijuana growers are required to register their growth site by law annually.

Christine Totten, Ashland, noted she is concerned with attractive nuisance and challenged the idea that it would decrease the value of an individual's property, describing the property as rich for agricultural use as being a benefit to a property that would only increase the value. She further argued the security of the growth site or containment as outlined in the draft ordinance is not something any other property owners would be subjected to abide by. Mayor Bellah pointed out that the City stipulated regulations of this manner towards property owners with swimming pools. Ms. Totten explained she felt this analogy was not similar. She further expressed her concerns regarding the draft of the ordinance.

Mayor Bellah requested a response from the community whether by email or phone call regarding their ideas on the restrictions that are acceptable for marijuana growers and why dispensaries are concerned with residential growers. He further invited any comments regarding the ordinance Attorney Knudsen drafted for review.

Mayor Bellah inquired whether Council would like to move forward with revising the draft further. Council's consensus was to schedule a study session regarding revisions of the ordinance.

Councilor S. Bartell expressed the council is representing what the community members are concerned with, not a personal viewpoint regarding marijuana.

NEW BUSINESS:

- 1) Motion to Create a Traffic School. Chief Bowker came forward to explain the police department is requesting authorization from the Council to offer online traffic school to qualified individuals. Further discussion followed, as Chief Bowker suggested Officer Alexander could identify and notify qualifiers for the school. He further expressed the eligibility requirements to participate in traffic school. Further discussion followed.

MOVED BY LUZ, SECONDED BY JONES, THE CITY OF PHOENIX MUNICIPAL COURT SET UP A TRAFFIC SCHOOL PROGRAM FOR DRIVERS WHO MEET THE CRITERIA. There was no further discussion.

ROLL CALL VOTE AS FOLLOWS:

Ayes: Sophie, C. Bartell, Jones, S. Bartell, Chris Luz, and Helfrich

MOTION APPROVED WITH SIX AYES

- 1) Resolution to purchase 210 N. Rose Street. Mayor Bellah explained that the City spent approximately \$15,000 to demolish the property and the County has agreed to sell the property to the City with a requirement for City use for 20 years. The Mayor expressed his concern for this stipulation, as it is not a very large lot and the City does not have a specified use for the property. Mayor Bellah inquired about suggestions from Council. Councilor Helfrich suggested going back to the county to renegotiate, as it is R1 property and he does not understand the requirement of public use for twenty years. Councilor C. Bartell agreed with Councilor Helfrich. Further discussion followed, as Council's consensus was to attempt renegotiation with the County. Attorney Knudsen suggested Council's direct involvement with renegotiation.
- 2) Discussion on Medical Marijuana Dispensaries in Phoenix. Mayor Bellah explained there are a few different entities that are seeking a business license that would fall under this type of business; however, as there are no business license applications currently in process for this type of business, he would like to discuss this item in general, rather than a specific business. Further discussion followed, as Mayor Bellah commented he requested public input regarding whether or not to have these dispensaries within the city limits and received comments that were 60% in favor of allowing medical marijuana dispensaries in town.

Councilor S. Bartell commented that the City has a current ordinance that disqualifies a business from obtaining a business license if the business does not comply with federal law, and this law should be enforced. Further discussion followed, as Council debated whether to enforce the ordinance in place.

Councilor C. Bartell expressed when a council member has an opinion that disagrees with someone or a group within the community; it does not mean that Council is uninformed, uneducated, uncaring, or wrong. She further explained that it simply means that there is a difference of opinion, and if both sides of the disagreement can respect each other and treat them respectfully, it goes a long way towards resolving an issue.

Leland Berger, Portland, commented Council has to decide whether they will allow a dispensary within the City, which would provide revenue for the City and abide by the constitution or whether they would like to spend funds in court. As discussion furthered, Mayor Bellah questioned how the ordinance could be unconstitutional if Oregon law does not allow dispensaries currently. Mr. Berger replied that he does not think any of the existing facilities are violating state or federal law. Further discussion followed, as Attorney Knudsen commented that he and Mr. Berger hold a difference of opinion regarding the how to apply the law regarding this subject. Further discussion followed.

Diana Nelson, Phoenix, commented on being a prior City Council member and explained that the City Council takes into consideration the community members opinions and

diligently seeks public opinion on matters. She further explained she went door to door in her neighborhood inquiring about whether the individual wanted to have a medical marijuana dispensary in the City of Phoenix. She added that she had spoken with 38 individuals and all of them said they would not like to have this type of business in the City.

Tere Knight, Medford, came forward to explain she feels that no one understands the idea of gifting, which is giving excess medical marijuana the excess medicine to others in need of the medicine.

Carrie Miller, Medford, expressed she questions the motives of the council and/or whether Council is really representing the community.

Clair Pence, Phoenix, came forward to express the Veteran's Administration recognizes medical marijuana usage in the States that have medical marijuana laws. She further pointed out that the OMMP now recognizes PTSD as a reason to receive a medical marijuana card and asked the Council to support the dispensary for this medicine to allow safe access for those in need of this medicine.

Charles Goddard, Phoenix, commented he takes care of his mother and father and noted he is an associate of Andrea Adams and he supports a medical marijuana dispensary.

Christopher Marino, Ashland, explained he recently met with Mayor Bellah and Council President Sophie regarding opening up a testing center for medical marijuana in the City of Phoenix. He added that the meeting implied that his business license application would be on hold until the final publication of the OHA rules. He wanted to clarify Council's position regarding the allowance of a business license. Councilor S. Bartell clarified the City's position by stating the City will not issue a business license to any business that does not comply with federal law. Further discussion followed.

Andrew Sheppard, Ashland, expressed he is a prior resident of Phoenix and he currently is employed in Phoenix. He further stated he felt it was important that Council does not choose to dismiss anyone's opinion simply because the individual is not a resident of Phoenix. He further commented he is a medical marijuana user and he wanted to express his gratitude for having a safe place to go to obtain his medication.

Justin Luke, Phoenix, expressed he is a medical marijuana patient and would really like to continue to have a safe place to obtain his medication.

Marie (inaudible), Phoenix, came forward to address Ms. Nelson's door-to-door vote, as she stated she did not feel this was a topic that many people would feel comfortable answering how they really feel, especially when their name and address are requested along with their answer.

Brittney Nottingham, Talent, expressed the community needs education regarding medical marijuana and the community should embrace a safe access to the medicine.

Josalyn (inaudible), Phoenix, commented she has been a medical marijuana patient for many years and she noted she has attempted to grow marijuana herself, but was not successful. She further explained the only way she has been able to obtain her medicine is through other sources and she would like to continue to have a safe place to go.

EXTENSION OF MEETING:

MOVED BY SOPHIE, SECONDED BY JONES, TO EXTEND THE MEETING UNTIL 9:30 P.M. There was no further discussion.

ROLL CALL VOTE AS FOLLOWS:

Ayes: Chris Luz, Helfrich, Sophie, C. Bartell, Jones, and S. Bartell

MOTION APPROVED WITH SIX AYES

Christine Totten, Ashland, came forward to read aloud some of the comments posted on the Phoenix Oregon City Watch's Facebook page regarding this topic.

Mike Stitt, Phoenix, asked about the ordinance regarding business licenses and whether the most recent change to the ordinance was made simply to prevent dispensaries from obtaining a business license. Councilor Sophie noted that the most recent modification to the ordinance did not add anything regarding compliance with federal law, the modification was made to clarify the language already in the ordinance.

Tori (inaudible), Ashland, spoke about working at a nonprofit dispensary in the City and promoted the education of the public regarding medical marijuana.

Councilor Jones inquired why Ashland does not have dispensaries in business as the City is known for promoting alternative medicine. Ms. Adams commented she felt the question should be directed towards the City of Ashland. Further discussion followed.

Andrea Adams, Talent, expressed their can be a vast level of education and knowledge based on who is hired in a dispensary, and she admitted there are some dispensaries that are not very educated; however, she claimed that she has been committed to providing quality medicine, which requires extensive research on the behalf of the dispensary. Further discussion followed, as Ms. Adams explained information regarding the science behind the medical research regarding the different types of strains of marijuana.

Leland Berger, Portland, announced the eighth national Cannabis Therapeutics Conference will be held in Portland May 9th and 10th, where scientists from all over the world will be presenting their studies.

Andrea Adams (continued), expressed her concern for the many City Council discussions regarding medical marijuana at public meetings and the support has been towards producing and dispensing medical marijuana by the public in attendance by most, if not all public comments at the previous meetings. She further explained she is disappointed about the ability of her and the Council being able to work together and allow her to discuss the dispensary on an educational level. Ms. Adams went onto explain her passion

towards her position and requested moving forward in the City that does not involve litigation. Further discussion followed.

Tom Fischer, Jacksonville, came forward to express his concern for those medically benefited from receiving medical marijuana and suggested the Council find a way to work with the people that are attempting to dispense this medicine locally.

Jeffrey Carey, Talent, expressed approximately four years ago he was standing before the City Council of Lake Tahoe expressing the same argument. He further stated the City Council has no right to ban dispensaries, as it is morally wrong and it is against the constitution due to State law. As he expressed his disappointment, Mayor Bellah inquired about his remarks towards Council regarding his disappointment. He replied that he did not feel he would have to defend his position so strongly when there is a state law regarding medical marijuana.

EXTENSION OF MEETING:

MOVED BY SOPHIE, SECONDED BY JONES, TO EXTEND THE MEETING UNTIL 10:00 P.M. There was no further discussion.

ROLL CALL VOTE AS FOLLOWS:

Ayes: Chris Luz, Helfrich, Sophie, C. Bartell, Jones, and S. Bartell

MOTION APPROVED WITH SIX AYES

Mayor Bellah requested an email in response to his question regarding why Mr. Carey feels that he is being treated differently or unfairly. Ms. Adams replied that they would be happy to address that question in an email.

Melanie Barniskis, Phoenix, came forward to emphasize the need for safe access in communities throughout Oregon. She further explained the medical benefits of cannabis that has helped her with an illness that otherwise would leave her in considerable pain, even with prescription medication. She added that having a dispensary available sooner would have saved her a year of agony, due to the availability and the quality of the medicinal cannabis that cannot otherwise be located.

Mayor Bellah requested email comments to either the City Manager or Mayor Bellah regarding their position towards medical marijuana dispensaries in the City of Phoenix. He further commented the City of Phoenix would be the first to permit a medical marijuana dispensary in the valley and the Council is being very cautious to identify all of the issues that may arise with this type of business in the community. He raised another question for email response of whether anyone would go to a dispensary if the cost of the medicine were twice as much as it would be to obtain the medicine from a grower. Ms. Adams invited Council to come to her dispensary for educational purposes.

Mayor Bellah inquired whether Council is prepared to hold a public hearing or to hold another public meeting at a larger venue on this subject. Council's consensus was to hold a public meeting with plenty of notice for a larger response from the community.

COUNCIL ITEMS, COMMENTS/REPORTS:

- 1) Councilor S. Bartell requested only council be present at the invitation to the dispensary. Further discussion followed, as the City Manager stated he would look into the feasibility of having all councilors at the dispensary at the same time, as there would be a quorum.
- 2) Councilor S. Bartell suggested putting the medical marijuana dispensary within city limits on the May ballot to gain perspective on what the community desires.
- 3) Councilor C. Bartell commented the Parks Department, the Community Garden, and the Phoenix Garden Club planted over 300 bulbs that are set to bloom in the spring.
- 4) Councilor Helfrich inquired of council whether the Steadman house and the property proposed before the City was a definite no. The majority of council commented on interest in the property, not on the Steadman house. Councilor Helfrich responded he wanted to make sure, before the Steadman house is demolished.

STAFF REPORTS:

City Manager's Report:

- a) Mr. Dahl announced he will set a meeting up with La-Z-Boy the following day to discuss a proposal for settlement.
- b) He announced the updated Phoenix tracking log should have been posted to the City's website as of last Friday.
- c) He commented he is working on an announcement for the Planning Director position.

Councilor Sophie inquired about the budget position expired December 31, 2013. Mr. Dahl replied that Annegret Topel's position expired and she is interested in renewing her position, which will be before council at the upcoming meeting. Mayor Bellah inquired whether a volunteer is permitted to be on two different committees. Mr. Dahl replied he would research the answer and respond shortly.

Mayor Bellah announced Mr. Dahl had to approve a purchase for repair on Fern Valley Road that exceeded his \$5,000 authority; therefore, at the following meeting this item will be on the upcoming agenda. Additionally, Mayor Bellah suggested discussing whether the \$5,000 limit is too small for approval at the City Manager level. Councilor Sophie suggested a review of the purchasing policy at the upcoming meeting.

Respectfully submitted,

Attest:

Janette Boothe
Deputy City Recorder

Steve Dahl
City Manager/Recorder