

**MINUTES**  
**City of Newport Planning Commission**  
**Work Session**  
**Newport City Hall Conference Room A**  
**October 26, 2015**  
**6:00 p.m.**

**Planning Commissioners Present:** Jim Patrick, Lee Hardy, Mike Franklin, Rod Croteau, Bill Branigan, and Bob Berman.

**Planning Commissioners Absent:** Gary East.

**PC Citizens Advisory Committee Members Absent:** Dustin Capri (*excused*).

**City Staff Present:** Community Development Director (CDD) Derrick Tokos and Executive Assistant Wanda Haney.

Chair Patrick called the Planning Commission work session to order at 6:02 p.m. and turned the meeting over to CDD Tokos.

**A. New Business.**

**1. Initial discussion about recreational marijuana.** Tokos said he would spend most of the time running through his cover memo, Attachment 2, and Attachment 7; but he was happy to talk about other things as well. He said this is a lot to digest. He noted that there were a couple of items being distributed tonight that were not included in the packet. One was a copy of an email from Police Chief Mark Miranda raising the question of whether preschools or daycares should be pulled into the spacing distance. The other piece that is new and not in the packets is the draft land use compatibility statement. He said this is a document that is provided as part of the application. He doesn't know the logistics of whether OLCC sends it to us or the applicant brings it in. He noted that this is the type of form OLCC will be looking for before a license is issued. We deal with these forms for other agencies such as the Department of State Lands and DEQ. This form is consistent with those other land use compatibility forms. What Tokos looks at is that they don't ask us questions we can't answer. This is much like the DSL form where it's marked that either the use is allowed, it was not allowed, or we don't know yet because they have to go through some land use review. He said he doesn't have a lot of heartburn with this form. He noted that this is a draft form that he got through the League of Oregon Cities.

Tokos noted that in his cover memo he took the time to break down how the existing land use rules would apply to recreational marijuana facilities. First he looked at the residential zoning districts. In the zoning ordinance, the permitted uses are listed specifically and are predominantly residential. R-4 allows a conditional use for professional offices, and hospitals are allowed out right. But basically you're talking about single-family, duplex, or triplex. The only way they could try to horseshoe into this district is to approach it as a commercial use in a residential area. They could try to claim this as an accessory use. He said that won't fly because it isn't customary; it hasn't been legal so they can't get there. Croteau noted that in their rules the OLCC makes provisions for processors, retailers, and wholesalers. He said why it wouldn't be covered under accessory use is documented on pages 12, 17, and 36 of Attachment 5. Tokos said the Denial of Application is what he looked at on page 11 of Attachment 5. He said you will note that those who are currently medical dispensaries have to make a choice; it's not a dual setup moving forward. He noted that the one about the proposed licensed premises of a wholesaler was added; it wasn't in the October 15<sup>th</sup> version that he had worked off of. The October 21<sup>st</sup> draft came out just before the meeting packets were prepared; and then OLCC had a final draft on October 22<sup>nd</sup>. Croteau noted that it mentions prohibited in an area zoned residential; so wholesalers are out. He pointed out number 3c on page 17 eliminates processors. Then on page 36 it mentions retail premises. Tokos said under number 3 on page 17 it also states that a retailer may not be located within 1,000 feet of schools or within an area zoned exclusively residential. He said, but what do they mean by exclusively residential use; would that be in R-4 because it does allow other uses. He doesn't believe we have much in the way of exposure in the residential zones. He said somebody could try to horseshoe it in through a home occupation. For something like a home grow, that's the only place he sees it potentially landing. But with a home occupation, it can't be outdoors. There can be no display of the business outside the residence. They can't have employees; and if it's retail, they're limited to 8 vehicle trips per day. Hardy asked what if they're wholesale. Tokos said that might work; but only 25% of the structure can be utilized for the business. Croteau said maybe a lab; and Tokos agreed maybe that. Tokos wondered on the flip side, if the Commissioners thought that the home occupation standards are transparent in the neighborhood. He asked if they're doing growing in a shop where nobody sees it and they're not aware it's there; is it a problem then? Hardy said maybe not if it's just a grow operation, but if they start extracting that could be something else. Tokos said clearly that's covered through OLCC rules. Hardy said, but you have to know it's going on to enforce it. Berman said that he didn't see any problem on the residential side. Other restrictions will limit them so much; it's not financially viable, or it's so small of an operation that it doesn't bother anybody. Tokos said he's not sure they will get a home occupation. He said we have had some folks "tire-kicking" about vacant lots for growing. They can't go with that because it's a commercial use in a residential zone. Franklin said there are your "average Joes" that are growing their four plants and

selling those directly to the dispensaries. Tokos said they are providing surplus plants to dispensaries; that's how the program works. Croteau thought furnishing is well covered there. Branigan asked if Tokos knew what other jurisdictions are doing; and Tokos said he didn't. Hardy asked if the County is doing anything. Tokos said he knew they have something for grow operations.

Tokos said on the commercial and industrial side of zoning, we have use categories and don't spell out what specific uses are allowed. They're general by the character and the nature of the use; like bulk retail, manufacturing, wholesale sales, etc. We don't have anything for agriculture. If the Commission feels it's appropriate, that's one where we could define agriculture as to how and where it's permissible. He said if the Commissioners think growing is part of the manufacturing operation, then it's permitted in C-3 and the industrial zones. It would have to be entirely indoors unless it's in I-3. Branigan asked what about in the UGB. Tokos said this only applies to those properties that are annexed. The County's rules apply until they're annexed. Berman wondered what the designation around the reservoir is. Tokos said it's Public, so you don't have to worry there. Once it's annexed, it will be under Public zoning; and we are in the process of annexing the property we own. Everything else would still be under the county's Timber Conservation. Croteau asked if they didn't have to get an agriculture permit to grow. Tokos said they would deal with the Department of Agriculture because it's a crop just like any other. Croteau wondered about those lands that are under Timber Conservation; and Tokos said he's not sure how that will play out. Patrick said it's reasonable to expect that they can grow in the industrial zones and in C-3; it's manufacturing. Tokos said it would be conditional in C-3 and outright in all of the industrial zones. Patrick said they could do selling in the industrial zones. Tokos said retail sales are a go in all commercial zones. Patrick said, and retail growing in C-3. Tokos said that I-1 would be good too for retail sales. Patrick asked if the City's GIS is good, once we figure out roughly what goes where, could Tokos show maps where it could be and what it could be and maybe highlight all the ones that are all residential. Tokos said you're looking at the highway corridors really. South Beach has I-1 zoning. There's C-3 on US 20 and a pocket on US 101 up by 12<sup>th</sup> Street; the rest of 101 is C-1 and will be retail. The last I-1 is way up north by 73<sup>rd</sup> Street; I-1 and I-2. McLean Point has industrial, but it won't be a marijuana operation. There's fourteen acres by Wilder where the temporary batch plant was located. That was purchased for heavy industrial use at some point. There's more light industrial down by the airport; but it's not currently serviced. The I-2 property up north is Paul Larson's shovel-ready land. Across from that will be PUD's new yard; so much of the I-1 will be gone up there. Tokos doesn't know what will happen with Larson's I-2. Larson's working on wetland mitigation and re-authorizing the shovel-ready status so it doesn't expire; but he has nobody interested in the property. Tokos said that the light industrial in South Beach is probably where we would have some exposure. There's a fair amount down there.

Berman said a grow operation has to almost be indoors. Tokos said he didn't know. He's not sure how these things would be set up. He expects that you may find a number of different licenses because they're doing a number of different things; growing, processing, packaging, distributing; wholesaling. There may be multiple licenses. You could have a situation where you could have a retail component too. Berman wondered how this parallels to liquor; things like brew pubs and distilleries. Tokos said they're not that much different. Some are strictly retail. They have to go through the state license as a liquor dispensary. It's an OLCC synced venue. The oversight is a little more restrictive in that regard. He mentioned that Rogue has their distillery and then their little sales boutique; and Hood River has some combined in one location. You can see the different ways this gets packaged.

Tokos said if the Commissioners felt it's appropriate, we could do a land use to deal with agriculture as its own category. Or if you feel it's reasonable as is, then we don't need to worry about making changes. Croteau said he's good with this. Patrick said he wouldn't want to see open grows that become an attractive nuisance. Tokos said the only way that could happen is on I-3 property. That's the only place they could do it. In I-1 and C-3, it has to be indoors. Franklin didn't think we have the climate to support it here. Patrick said he didn't want to test it. Croteau said they would need a fence, security, and cameras. Tokos noted that you can't do razor wire unless it's zoned Public. Patrick said so all they could do is a regular fence. Tokos said they could get a building permit and do a concrete wall. Berman and Branigan didn't think it would be a problem. Tokos said we don't have much I-3 land. Tokos said he expects to see GVR going a different direction with that property. It is 14 acres and is attractive for bulk retail (like Lowes and other large commodity stores).

Berman asked Tokos what his feelings were. Does this need firming up, or is it good enough that it won't be a problem in the foreseeable future. Tokos said he doesn't think we have much in the way of exposure for an outdoor grow. It can't be in a residential zone. It's pretty defensive except for I-3, and we don't have a lot of that. Hardy said the climate will take care of the rest of it. Tokos said they could do an outdoor grow, but there's not a lot of exposure. Patrick said manufacturing or indoor grows could be in C-3 and the industrial zones. Tokos said in C-3 it's a conditional use. Patrick asked, and if they're doing retail. Tokos said it's fair game; any commercial or light industrial zone. There are lots of options for retail. It could end up in the water-related zone through the conditional use process. It's outright in C-2. So you could see it on the Bay Front much like the medical dispensary. Patrick asked, but the medical dispensaries have to pick either medical or recreational. He asked if those two different operations can't be within 1,000 feet of each other.

To get to that answer, Tokos moved to Attachment 7. He said he took a stab at extending the same concept we put together for medical marijuana for recreational with the same allowances; mainly for the Police Department because they recognize that this is a controlled substance at the federal level. He used the same kind of enhanced access and supplemental background checks.

With the definitions, he ended up adjusting them so they applied to recreational marijuana as well as medical. He defined what a medical and a recreational endorsement is. He didn't try to define all the terms that OLCC has. He tried to keep it fairly simple. He noted that 4.20.015 explains to what extent a business license endorsement is required. Section 4.20.020 (Application Requirements) is the same except that he had to separate the different licensing authority (OLCC). Berman asked if it's the same endorsement. Tokos said they're different endorsements. We already have a medical endorsement stamp; now a recreational endorsement stamp will be on the business license. Franklin wondered why the State is keeping them separate. Tokos said to the legislature, it's the framework. Medical is different because it is all medical-related. You're growing for medicinal purposes and sharing the plants so with a prescription people can get it. It's more akin to a pharmacy. What we're now talking about is a regular store for sales for recreational use. There are two different distinctions. That's why they're keeping it separate. The senate bill allows limited retail sales for this stop-gap term. Tokos believes that every one of these medical dispensaries will try to get a recreational endorsement; but we'll see. Those using it for medical purposes can pick it up through a retail establishment. He guesses the four we have will all go for retail licenses because it's more profitable. That's probably why they set up in the first place. They will have to make that choice. You can't have medical and recreational dispensaries at the same physical location or address. Berman wondered if the same person can have both. Tokos would guess. You could potentially have unit A as a medical dispensary and Unit B as recreational. He doesn't think that the current facilities are set up so they could do that; they are single-address-type operations.

Berman noted a typo in 4.20.020 (E) where the word should be "person" not "personal". Tokos said the only change in "Application" was to roll in OLCC. Hardy asked on the first page in the second to last paragraph, what "commercial recreation use" is. Tokos said that is as opposed to growing your own plants and smoking them. You are making money off of it. He pulled that out of the Administrative Rule; but he can put "commercial recreational purposes" instead of "use."

Tokos noted that under 4.20.025 (Agreement), at the time he didn't have all of the Administrative Rule sites, so that is why they are highlighted in yellow. Patrick asked if recreational facilities are doing video surveillance the same as the medical facilities. Tokos confirmed that. He said these provisions are all in here. OLCC didn't draft it necessarily the same as under OHA, but the same things are theoretically covered. OLCC says they have the authority to perform background checks; but they didn't say how extensively they would; so he put in language that the Police Department may accept background checks done by OLCC. That's why that flexibility language is in there. The licensee will get background checks and any employees either by the state or the city. Branigan said it says the individual can't have been convicted of the manufacture or delivery of a controlled substance; it doesn't say they can't have been a convicted rapist or something. Hardy said it does say they shall be of good moral character; but that's also not defined. Tokos said that is what we used for medical marijuana, so he used the same. That is a tough spot for the City to go down. The Police Department seemed happy with that language. Regarding alarms, Hardy thought you could stipulate that the alarm answering point notify the police. Berman said that's how it's stated now. Branigan said under the background checks, he didn't see anything prohibiting someone from carrying a gun into a recreational marijuana shop. Tokos said you can't if they have a concealed weapons permit. Patrick said the only place is on federal property. Tokos thought the concept on background checks is clear. There's probably good public policy on why not to have people convicted of crimes. Berman said the absolute background check will show that. Hardy said you can't get background checks from some states. Berman said apparently the police are happy with the way it's going. He asked if someone released from prison after serving time for murder would be of good moral character. Tokos said that would be OLCC's call. Obviously, if somebody is convicted of heroin possession, they are not going to be able to work there. The product is still a controlled substance at the federal level, and if they've violated the controlled substance act and had a conviction for marijuana, they can't work in the facility. He said you could liken it to if you've had a DUI, you shouldn't be working as a bus driver. Tokos said we have a fee resolution, and he assumes it will be the same as for medical endorsement.

Section 4.20.040 (Issuance) gets at the 1,000 feet. That's the way Tokos drafted it, but the Commission has options here. He drafted it as 1,000 feet from another facility that is retail to retail; which means you can have wholesale next door, or medical, or anything of that nature. He said the reasoning is that if you had three or four retail locations next to each other say on the Bay Front, in Nye Beach, or City Center, it could change the character and be detrimental to other businesses. Tokos was asked if we do that for anything else. Tokos said for medical marijuana, and we're treating recreational just like those if this is put in place. That's the state law for medical; and this concept extends the same restriction that's on medical facilities to recreational facilities. The question was raised if the OLCC looks at bars and how close they are; and it was thought that there is something in the rules. Tokos said we have four dispensaries, and we would have more if not for the 1,000 feet state law. Whether they'd all be successful, he doesn't know. Patrick said it's a gold rush right now. Berman wondered why OLCC didn't put it in when it was on the medical facilities. He said they must have thought about it. Tokos said he was told that some larger metro areas like Portland didn't want it. That's probably why they left it to the local jurisdictions. That way those that want it can do it; and those that don't want to do it don't have to. He said if we were to adopt it, we're not treating recreational any differently than medical marijuana; it's not to anyone's advantage then. It does limit the total number in the community. There are only so many commercial properties that are that far apart, and then if you factor in the schools. We have four medical marijuana facilities and can have recreational stores not closer than 1,000 feet to each other. So, we're not preventing people from having reasonable access to the product. It can have detrimental effects elsewhere. We've had comments that some don't like the facility on the Bay Front because they thought the Bay Front was family-oriented. Tokos said if the Commissioners don't see a problem, maybe

you don't want the spacing. If you think it could be a potential problem, then maybe we should space them like the medical marijuana facilities have to do. It allows a reasonable number. It doesn't impact the existing medical facilities. Croteau thought that 1,000 feet is reasonable. There could be one in Agate Beach; 15<sup>th</sup> Street is as far north as one is right now. South Beach is another place you could locate. That's six facilities. On US 20, that's seven; the school locations a little tricky there though. Patrick said the rules say if providing education; so anything preschool with education-type stuff. Tokos said they use different language; that is for medical. This says public elementary or secondary schools or private parochial or elementary schools. So it would have to be an elementary school; preschool won't be. Tokos said that's what Chief Miranda was asking. Tokos said there are a number of other locations where they could pop up. Branigan asked if they can locate next to a government facility; and Tokos said that would be no problem. Hatfield was mentioned; and Tokos said that Hatfield won't happen. It's water-related, but it's Hatfield, and they won't allow that on campus. Berman said it's also not elementary or secondary. Tokos thought that OCCC doesn't get hooked. This is talking about minors and is more oriented toward that. Tokos said unless the Commission wants to delve into that, that's OLCC's call. Franklin thought that 1,000 feet is fair. Patrick thought we should make them as identical as possible, which would require 1,000 feet apart for retail. Patrick said if they wanted to have them side by side, one medical and one recreational, that's fine. He doesn't care if right behind you have a grow operation. Tokos said you could require a grow operator to be 1,000 feet from retail. Franklin asked if with a grow operation there's a fire risk. Croteau said not if it's a typical greenhouse. Tokos said a permit to get a grow operation will get routed through code stuff.

Croteau thought this is good so far. Tokos asked if the Commissioners were fine not going with daycares; and just go with what the state has for schools. Croteau said he can see an issue with minors; not preschoolers. They are too small. Berman thought that 1,000 feet was too much. Croteau said if we reach saturation with 1,000 feet, then we can reconsider. Tokos said if this proves to be problematic, that standard can always be changed; but if it has an impact, that can't be changed. There will be plenty of options for retailers. We already have four medical facilities operating under this same paradigm. He asked how many pharmacies do we have in town; about four? Franklin thought it could start looking bad to tourists. If there's an abundance of these facilities, it does look bad to some people. He thought 1,000 feet was fair. Tokos said it's a learning curve. There are people that obey and people that don't. If we get a large concentration, we could get some blow back. Businesses may start to suffer. We may hear business owners saying that people don't want to come to their restaurant or whatever. That's not unreasonable. Berman thought that the wording on 4.20.040 number 7 was a little funny and not parallel to the others in structure. Tokos said he would adjust it.

Patrick said if you go in the I-1 zone, you could grow indoors, have a retail operation, and a medical operation. Tokos said the retail and medical would have to be a separate location under the State's rules for medical. If they have a different address and location, that's okay; such as unit A and unit B. He said you could have a situation where you have everything from grow to retail, and maybe some distribution could be intertwined if they meet the State's rules and get licenses. Berman wondered if OLCC is going to treat existing medical as priority in getting licenses. Tokos didn't know the state's procedure there.

Tokos thought it's prudent to get these changes on the books as quickly as we can. He said our office will get hit with questions as people get ready to submit for licenses in January. Berman thought it would be good to do an outreach to the four medical places and tell them what is happening; and if they want to switch over, they better get in early. Hardy thought the City needs to be careful doing that, and Croteau agreed. Tokos said we can let them know what the rules are and that they are welcome to attend the hearing on the business license stuff. He doesn't know if we want to get into what OLCC will do. That is their job; and he thinks they are probably on it. Croteau thought that they all are probably doing retail now. Tokos said, which tells him they are already talking to OLCC. Hardy said the two products are not vastly different. Tokos said the difference is administrative. Patrick thinks that the medical dispensaries will go away. There may be some in the county. Tokos said maybe it's more socially acceptable to say medical. It's easier to do retail than medical, and it's more profitable too. Berman said there are some nonprofits in the medical dispensary business to help people who have a need. Patrick said there probably will be at least one because they see a need. He expects the price to come down. Tokos said, as Patrick had mentioned, it's a gold rush to be at the beginning of something. It will settle out. Some businesses will stick, and some will not.

Going on, Tokos noted that 4.20.045 explains that endorsements aren't transferrable; which is the same concept. Berman asked what if a retail store gets sold and they want to do an endorsement because they are buying this business and somebody comes in with an application the day before. Tokos said that is a State function. For us, it's nontransferable; and they know that. He said for example say the operator at the operation on 15<sup>th</sup> Street sells his business, they want to make sure whoever is buying it is licensed and gets in and gets their business license. They can protect themselves. Patrick said they have to get their license before they can operate.

Under Section 4.20.050 (Inspection), Tokos added recreational to it. It's still that the City can conduct inspections. For Section 4.20.055 (Revocation), Tokos did add language under number 3 to cover the current interim period of time where because of Senate Bill 460 medical facilities can actually market retail so that their endorsement can't be revoked while they're permitted to do retail. Berman wondered if under B3 where it talks about any marijuana items, if those are things with THC in them, or paraphernalia, or what. Tokos said it's spelled out under number 6. He can move that to number 3. That's how it's defined by OLCC. Berman wondered why a couple of these are not on the medical side. Tokos said OHA didn't stick it in the rules. For

medical he pulled out items that would invalidate State licensing. It's put in here so that if OHA or OLCC decide not to revoke their license, we have the authority to. We don't know how they are going to respond, and we may want to yank their business license.

Tokos said the rest of the code is appeal, which is the same. He cleaned up some cross-references that were bad. Croteau asked about hours of operation. Tokos said they are the same as liquor stores; 7:00 a.m. to 10:00 p.m. We can set that stricter if we want to. Tokos noted that the Commissioners had discussed drive-up windows; and walk-up windows were mentioned. He said this is just parroting what the state has. It was noted that the retail display has to be enclosed and has to have surveillance. Franklin said you have to walk into the facility; it has to be a separate room completely.

Tokos asked the Commissioners if this seemed like a reasonable approach, and the consensus was that this was reasonable. It parallels the State. They thought Tokos did a good job with it. Tokos said he will take this to the City Council work session at noon on November 2<sup>nd</sup>. He said it wouldn't hurt to have a Commissioner or two attend if you can to share your perspective. He said this may not come back to the Commission. Because it's just a business license change, it will be just set up as a Council hearing; which works better anyway.

**B. Adjournment.** Having no further discussion, the meeting adjourned at 7:11 p.m.

Respectfully submitted,



Wanda Haney  
Executive Assistant

